REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2017-04517

Between

JOSEPH BHAJAN

ELVIS THOM

Claimants

And

HAMZA ABDOOL

Defendant

Before The Honorable Justice David C. Harris

Appearances:

Ms. S. Seunarine Hold for Ms. V. Gayadeen-Goopeesingh with Mr. C. Bissoon and Mr. S. Maharaj for the Claimants.

Mr. T. Dassyne instructed by Ms. A. Goring Hold for Mr. El Farouk Hosein for Defendant.

JUDGMENT

1. The Claimants are occupants of premises at Dumfries Road, Hermitage Village. They (or their predecessors) occupied their respective parcels of land some 35 to 40 years ago. At the time, they accessed their premises by foot, from various routes and along a foot path on or in the vicinity of the disputed strip of land. The houses were in fact located across a part of a road reserve (a.k.a the 'wardens road') and over the years the houses have expanded to completely block the width of the said road reserve. The said Claimants, over the years have resorted to using an footpath which expanded into an earthen way and further into gravel way and finally,

since 2012, an asphalted surface road some 10 -12 feet wide and approximately 100' in length as shown on the various cadastrals/surveys which have been tendered and accepted into evidence[1].

2. The Claimants' claim is; to a *license coupled with an interest/equity* in the said strip of land/now access roadway, and an entitlement to the use and enjoyment off and/or occupation of the said strip of land. The said strip of land is clearly set out in the said plans exhibited in this matter. That the said strip of land falls within the boundary of the lands of the Defendant, is not now denied by the claimants.

3. The Defendant is not a paper title holder. He has set out the history of the land usage, tenancy and ownership by his parents culminating it the lands being acquired and passed to him[2]. Fuller particulars of the transition, acquisition by his family and conveyance (if that is what it was) to him have not been provided. The Claimants however, in the end, do not dispute the Defendant's ownership. The Claimants are not paper title holders to their lands either. No evidence has been canvassed before the court as to how they came to be there. That is not an issue canvassed before the court.

4. The Defendant does not deny that the two Claimants along with several others have occupied the lands upon which homes are located i.e. the reserve/wardens road. The Defendant case is that:

   I. He is the title holder of the land known as 'B40' upon which the alleged access road is located.

   II. The Claimants having constructed their homes upon the lands provided by the owner of those other lands (whosoever that may be), for a road - road reserve/wardens road - are now the architects of their own dilemma. It appears the owners of the other lands upon which the Claimants are located was either Caroni LTD (or one of its successors) or Palmiste Estate. Nothing much turns on this however. The Defendant asserts that he is not concerned with those lands which are not his.

   III. That prior to 2012 when the Penal/Debe Regional Corporation ("PDC" or "corporation"), the local government statutory authority, unlawfully 'paved' the strip of land in 2012, the

[1] See the 2012 survey by Nicholas Westmas.
[2] There is no evidence as to how the property was actually acquired by the defendant.

Claimants had not used that strip of land and further, that there was never a path, gravel path, gravel roadway or any *Way* whatsoever, as alleged by the Claimant, prior to the 2012 paving.

IV. That the strip of land now forming the disputed access roadway, although falling outside of the fence line of the Defendant, does form part of the Defendant's lands.

V. That the said land left outside of the fence line, was a strip that was left as a buffer against fire, way back from the days when his parents rented the land as cane lands for Palmiste Estate. He further said that it also served to distance his animal slaughter shed on the inside, from the said neighbors - re: smells etc.

VI. Contextual facts include: He *acquired* the lands from his parents in around 1989; he fenced the lands some time in 2004/5.

EVIDENCE – FACTS FOUND

5. That the Claimants came upon the lands 35 to 40 years ago is a conclusion of the court on the evidence. There is significantly, no sufficient evidence to contradict that. Indeed, even from the pleadings on both sides, there is not really any contention to the contrary.

6. That the Claimants have built on a road reserve, again, is the conclusion of the court on the evidence. The evidence of this is represented on all the plans before the court, save for the 1989 plan, which was admitted by the Defendant to have been done and prepared for purposes that did not require the depiction of any land marks/features outside of the boundary of the Defendants parcel. There is now, on the evidence and by admission even, of the Second Claimant (if not both Claimants), no sustainable contention that the land does not belong to the Defendant.

7. Further, staying on this point, the plans exhibited in this matter although not tendered by the maker of the plans – the surveys did form part of the hearsay notice to which there was no counter notice or other application in opposition filed. Further still, notwithstanding the potential 'expert' character of a survey plan, the plan is evidence and can be tendered as any other document as a hearsay document, unless the subject of a successful counter notice or application in opposition.

8. Further still, the document having been put to the witness in the box, and the witness having recognized what it depicts and adopts it, then the content may go in, in any event. This indeed was also the case in this matter.

9. That the Claimants would have required some access way to their homes is obvious. At the onset let me say that the evidence discloses that the lands upon which the Claimants dwell and seek access to, is not that of the Defendant. They claim[3] to have used the strip of land on the Defendant's land to access their homes. The evidence for the Claimants is that at the time they first occupied the lands they did not know they had built on a road reserve or accessed their homes across the Defendant's lands. I accept this evidence. They only came to know the owners of the lands after the Defendants latter survey. The Second Claimant, Mr. Tom, understood this fact even more clearly it appears, after the Defendant's response when the issue blew up with the corporation paving the road.

10. The evidence is abundant that the Claimants used lands to their north, or put another way; the lands to the south of the Defendant's main family lands known as lot # B40, to access their homes. It appears that the front of the respective homes of the Claimants face the disputed access way and the Defendant's southern boundary and fence. This cardinal orientation applies to that of the witness Vera Sumair, a resident/neighbour of the Claimants who testifies to that.

11. Further still, I draw and accept the inference drawn from the evidence of the Defendant that at first, and notwithstanding the fact that the Claimants erected their homes across perhaps part of the reserve road if not the whole of it, the houses being small wooden structures at the time, perhaps still allowed for the Claimants some ingress and egress along the remaining portion of the said reserve. This would have been so up until they expanded their homes to the larger size they are now. The court accepts the Claimants' evidence that at the time they did not know of any of the boundaries and road reserves that are now the subject of this case. On the basis of this, the court concludes that they would have not had any reason to keep their buildings or their access pathway away from the then non- existent boundary line of the Defendant. And, the Defendant did nothing to bring it to their attention (if he was aware of the location of the

[3] See the cadastral depicting the location of the claimants houses; see also the cross examination of the two claimants; see further the photos tendered in the matter.

boundary at all). The said homes that were built or at least two of them, now entirely block the reserve road[4]. Those are the facts as found, upon the evidence. The Defendant testified to purchasing additional lands (lot #14) in 1998 located on the same side of the claimants, at the top of the said reserve road. From this lot the Defendant would have an even clearer view: of the lay of the land behind where he ultimately – in 2004/5 - erected his fence and; the development actions of the Claimants on his land.

12. That the Claimants at some very early point utilized the Defendant's lands to access their homes, is again, the courts conclusion. We start with the year 2010/2011 and the series of complaints made by the Defendant to the Corporation and work back. The said communication reflects the Defendant's complaints of the Claimants trespassing upon his lands and culminating in the corporation, no less, putting in drains and laying down an asphalt surface on what is contended is the Defendant's lands at #B40. Looking at the location of the homes as depicted in the plans exhibited and the photos put to and acknowledged by the witnesses, the Defendant's lands were at the very least, on a balance of probabilities, used for the purpose alleged by the claimants.

13. The Defendant's lands fall right outside the homes of the Claimants. That even before expansion of their homes, it is more likely than not that they would have used the Defendants property even in part, in conjunction with the outer remaining strip of the road reserve(if any) to access their homes. The photos at pp 96 and pp 97 of the trial bundle show the access between the Defendant's land/paved strip and the Claimants' homes such that it suggests that the strip is exactly where they would have without let or hindrance traversed over the years and which morphed from the footpath to a '*complete road'* by 1986/87[5] and further still, to a paved road by 2011. The court has considered the Defendant's evidence that the Claimants could have accessed their homes over the lands to the back of them and away from his lands/access strip. This evidence was not detailed and cogent enough (nor was it accepted by the Claimants or any other witness) to establish the point, if it needed to be establish at all. What is clear is that the front entrance of the various homes including the claimants, on the road reserve, face the disputed strip on the Defendant's lands. These homes were built 35-40 years ago, albeit having gone through significant improvements and expansion over the years.

[4] See cadastral plans and see the evidence of the Defendant himself.
[5] See Mr Bhajan's testimony in cross examination; see the cross examination of Mr. Tom about the road being *'sand pitch*' from 1986/7.

14. Did the Claimants utilize the "strip" in its present width for the sufficiently long and under the requisite circumstances to have not acquired an interest?

15. First of all me say that I cannot accept the Defendant's evidence as to why he erected his fence where he did. Even if the practice was once to leave a trace to protect your crops from the neighbours' lands on fire, there appears no reason to leave it to the outside of your fence and further, there is no evidence that during his time as owner, any such threat continued to exist having regard to, amongst other things, that for a very long time now he has had residential neighbors. Further still, the Defendant's contention that the location of his slaughter house had to be located significantly far away from his perimeter so as to avoid a nuisance to his neighbor is not plausible or logical. I cannot see that where he located his fence has anything to do with where he locates his slaughter house. He can locate his slaughter house anywhere and as far away as he chooses, regardless of the location of the fence. There is no evidence that the specific fence itself is required as an integral part of the slaughter house.

16. The court's enquiry with respect to the Defendant includes; whether he was mistaken as to his boundary and the location of the commencement of the road reserve or whether he consciously placed his fence in the location to make allowances for and in acknowledgement of the Claimants' persistent and undisputed use and occupying of the Way over the years. The Defendant's evidence is that he consciously placed the fence in its position fully knowing the lands to the outside of it were his. The Claimants did in fact use it, in its evolving stages, without let or hindrance for over 35 years. Further, the evidence of its expansion to the size of a 10-12 foot wide motorable roadway would be that such expansion commenced from at least 1986. This conclusion is based on the evidence of both Claimants and is referred to above.

17. The court notes further, that the Defendant purchased a separate lot - #14 – in 1998, on the top end of the said reserve road/wardens road and on the same side of the strip and road reserve as that of the Claimants. The said lot is represented on the several survey/cadastral plans tendered into evidence. The significance of this is that the Defendant presumably having visited the lot #14, if only to purchase, surely must have observed the use of the strip by the Claimants or by other persons than himself. This purchase was made some 6-7 years before the Defendant, according

to his testimony, erected his fence to the inside of the access strip, now known to the Claimants to be his lands.

18. The logical conclusion on all the evidence is either that **(i)** the Defendant located his fence where he thought his boundary was. He knew of the existence of a reserve/wardens road on the outside boundary of his lands. The difference between the Claimants and Defendants I suppose is that perhaps the Claimants really didn't care whose lands they were on or where the road reserve was etc. Occupation was their aim; and/or **(ii)** the Defendant erected the fence on the inside of the access strip on his land consciously acquiescing to the Claimants and others use of it as their access. Concomitant with this is that **(iii)** the Defendant passively encouraged the Claimants to act to their detriment; he knowing where his boundary was and seeing the Claimants expanding across the reserve roadway and utilizing his lands to access their own lands even with motor vehicles. The Defendant said nothing or did nothing except, in what must have been in full view of all, to build his fence on the inside of the fence line, leaving the access way/roadway for the continued use of the Claimants.

19. The Claimants did not give identical evidence of the evolution and time lines of the pathway into the road way and into what it is now. I see no reason why they should necessarily be expected to do so. There is sufficient commonality between them all to support the credence of the Claimants' evidence. What is clear is that the roadway was paved in 2011 and there is no sufficient evidence to suggest that the corporation had to clear a wider than foot-path-width, in order to effect the paving. They paved the only area between the Defendant's fence line and the buildings of the Claimants and other occupiers in 2011. I find that the roadway must have been the full width of 10'-12 'as shown on the plan and in the photos' at that time and indeed so since 1986.

20. When did it expand to a 10-12 'roadway? Well it did so from the time when the first motor vehicles traversed the area. This appears to be even before 1986. The evidence, albeit not highly particularized, is that even further back from when the roadway was further expanded, graveled and oil sanded in 1986/87, trucks would bring construction material down that road if surface conditions so permitted at the time. This the Claimants said, was so notwithstanding that it was not passable when wet, for instance.

21. On a balance of probabilities having regard to the pleaded case and the weight of the testimony of both Claimants, the court finds that the full width road came about in 1986. The Defendant proved objections and protestations to the use of the access strip commenced sometime in 2010.

THE PLEADINGS - THE LAW – IT'S APPLICATION

22. Counsel for the Claimants and Defendant submitted several useful authorities in their addresses. Mr. Dassyne contended that the pleaded case for the Claimants was not clear and that the Defendant responded to the only case that revealed itself on the pleadings – "*A licence coupled with an interest/equity".* The word "equity", tacked on as it were, to the word "interest" in the pleadings/relief claimed, did not appear to suggest to counsel for the Defendant that it added anything to the pleaded case of; *a licence coupled with an interest/equity*. Counsel for the Claimants in essence contended that the *interest* referred to was an equitable interest and foreshadows and opens up the prospect of (i) acquisition by prescription[6]; licence by estoppel[7]; proprietary estoppel.

23. From the pleadings, more particularly para 2, 3 and 4 of the statement of claim, I agree with the Claimant that *acquisition by prescription,* and the *licence by estoppel* are foreshadowed and do arise on the pleaded case in the context of the *equity* pleaded*.* Proprietary estoppel – an independent cause of action - although touches on several concepts akin to those that arise in the doctrines of *prescription* and *licence by estoppel* , is not the same and was not pleaded.

24. Even without Proprietary Estoppel as a pleaded case, I do agree with counsel for the Defendant that certainly having regard to the evidence led, the pleaded case for the Claimants was not the clearest. However, the Defendant did respond to the averments; did not avail himself early on in the proceedings of the facilities of the CPR to make clearer the case he had to meet[8]; nor take any evidential objections to evidence (including documentary) that tended to the proof of the wider case for the Claimant, as it were.

25. **What is the law?** What do the Claimants have to prove in order to establish the *licence coupled with an interest* over the access strip of land on the Defendant's property?

[6] See authority referred to by counsel for the claimants: Commonwealth Caribbean Property law, Kodilinye, pp194.
[7] See authority provided by counsel: Maudsley and Burn's Land Law: Cases and Materials 8th edition.
[8] See Part 28 and 35 of the CPR

The Right-of-way

26. The Claimants' case is essentially, at the minimum, a claim to a right of way. This claim and the learning thereto is subsumed if you will, under the rubric of an Easement. The character of an easement is adequately defined in ELEMENTS OF LAND LAW by Gray and Gray 4th edit at para 8.7. "*An easement comprises either a positive or a negative right to derive some limited advantages from the land of another. The easement must be annexed – that is, its benefits must be attached - to one parcel of land (the dominant tenement) and must be exercisable over another parcel of land (the servient tenement) ……**A typical easement is the restrained form of user implicit in a right of way."*** (emphasis mine)

27. A right of way is essentially a right to pass and re-pass along a Way. A right or an act of user, once capable of forming the subject of a grant can elevate to an easement in the appropriate circumstances. The Claimants claimed right in the instant case - at the very least – was a right or license if you will, to pass and re-pass (an act of user) along the now disputed access Way, upon a part of the lands of the defendant. This right as claimed; is not a loosely defined right such as , for instance; a right, in respect of a 'good view or prospect'; the right to wander at will over another's land and, the right to an unimpeded and general flow of air across ones neighbour's land, but rather is a clearly defined right in the instant case.

Licence by estoppel[9]

28. Subsequent to the principles concerning the origin and nature of an *estoppel* being reaffirmed by the Privy Council in as late as 1963,[10] there have been subsequent developments of importance and relevance to this case.

29. The doctrine of proprietary estoppel came to be employed to protect the rights of occupation of licensees[11], so that if C*, a licensee, acted to his detriment in reliance of an understanding that he*

[9] This initial definition is a substantial reproduction of Megarry & Wade, The Law of Real Property at para. 16-006
[10] Chalmers v Pardoe [1963] I WLR 677 at 683,684
[11] Inwards v Baker [1965] 2 QB 29

could remain on O's land for as long as he wished, his licence became irrevocable.[12] That right of occupation – a so-called "licence coupled with an equity" – appeared to be capable of protection not only against O himself, but against any successor in title who took with notice.[13]

30. In this way such "equitable licences" or "licences by estoppel" were in effect given the status of equitable proprietary rights. Where a court is asked to give effect to an equity arising by estoppel, the fact that the Claimant was a licensee prior to the events giving rise to the claim should of itself be irrelevant. The question in each case should be how best to give effect to the equity.(emphasis mine)

Continuous user[14]

31. *'The claimant must show continuity of enjoyment. This is interpreted reasonably. In the case of rights of way it is clearly not necessary to show ceaseless user by day and night. User whenever circumstances require it is normally sufficient, provided the intervals are not excessive'*. To this end the authors of *Megarry & Wade* refer to several scenarios one of which, unlike the instant case, *fell on the wrong side of the line* where a right of way had been exercised only three(3) times over 12 years.(emphasis mine) The claimants in the instant case used the access way continuously and regularly.

Estoppel-application to instant case

32. This brings me to Estoppel at common law and its application to this case. The Doctrine provides for "....*precluding a man from denying the existence of a state of affairs which he has previously asserted.....The rule was that there would be an estoppel where by words or conduct there had been a representation of existing facts (not of law) which was intended to be acted upon and was in fact acted upon to his prejudice by the person to whom it was made. The maker of the representation will not be allowed to allege in proceedings against the person so acting that the facts are other than he has represented them to be*." (Snell's Equity 27th Ed. Chapter 7). The doctrine however, is not a cause of action but a rule of evidence and no action can be founded upon an estoppel. (emphasis mine)

33. In applying the doctrine, It is clear that the claimants and their families before them (and indeed the other residents of the area) used this access-way openly and continuously without hindrance as they continued to expand and develop their respective adjoining homes and simultaneously improve their access and the Defendant and his predecessors not only did nothing to hinder its open use and expansion for decades, but further, there is inexplicably, no evidence of an

[12] Re Sharpe [1980] 1 WLR 219 at 223
[13] Inwards v Baker (supra)
[14] See para 28-058 of ***Megarry & Wade.***

antagonistic or combative relations between the claimants and the Defendant and/or his predecessors during these decades up to 2010/11. These circumstances would add to the whole of the course of conduct which led the Claimants and predecessors to believe they would have its use for eternity.

34. This whole course of conduct in the circumstances of this case amounts to a sufficiently clear and unequivocal 'representation or assurance' that the Claimants and/or predecessors could enjoy the benefit of the access for an eternity. The Defendant will not now be allowed to allege the contrary. Indeed, it would be unconscionable to do so.

DISPOSITION

35. **(i)** What is the *equity* that ***Megarry & Wade*** refer to? **(ii)** Is it the same to which the Claimants' pleadings refer? The fundamental principle is to prevent unconscionable conduct.

36. The short answer to the two questions posed above is yes; the Claimants' pleadings are referring to the same 'equity' referred to by Messrs. ***Megarry &Wade***. To establish the equity on the pleaded case, the Claimants need to establish the estoppel. To establish the estoppel, the Claimants must satisfy the court on three (3) matters[15].

37. ***Megarry & Wade*** set out the three (3) matters as: **(i)** 'Encouragement or Acquiescence, **(ii)** Detrimental reliance; and **(iii)** Unconscionability.

38. It would be a difficult sell, as it were, on the court's findings on the evidence above, to conclude that the Defendant *actively encouraged* the Claimants to develop the disputed access way and to develop their homes with the only access being across the lands of the Defendant. The accepted definitions of *active encouragement* require a more direct, personal and robust interaction or interface between the parties than that disclosed in this trial.

39. The court doth hereby make the declaration that the Claimants and/or their servants, licensees and/or agents have used without let or hindrance all that now paved roadway, measuring about 10 -12 feet wide as depicted and measured in the 2012 survey plan by Nicholas Westmas and exhibited in this matter to the statement of case, the defence and defendant's witness statement; with and without vehicles for over 35 years or more, to gain access to and egress from their home. But further, the homes are serviced it appears on the evidence, by electricity along that very access road.

[15]See para 16-07 of ***Megarry & Wade.***

40. That the Defendant passively encouraged the Claimants, by his acquiescence and conduct[16], to develop the road and their homes, is evident on the evidence. Whilst the Claimants used and developed the lands over the Defendant's property - it first being the leased lands of his predecessor in title/parent - the Defendant stood by and allowed the Claimants to act to their detriment knowing that the Claimants must have mistakenly believed that they had or would have obtained an interest in or right of way over the Defendant's lands. Subsequent to the development of the roadway as a 10' -12' Way, the Defendant who had grown up on the lands with his parents all his life and acquired it from them in or around 1989 had a survey done for that acquisition in the said year 1989[17]. At this point if he did not already know it, he would now have known that the lands in use by the Claimants and others were his. Indeed, he testified to have known the extent of the lands from his parents' days and even as far back as when the Claimants first came on the lands with their small wooden shacks.

41. The Defendant testified to the subject strip of land upon which the access now stands as always being part of his parcel and was always maintained and left, effectively, as a fire trace. Further still, the Defendant fenced his lands in 2004/5 on the inside of the said access way, which at the time was in the courts view in full use by the Claimants. That fencing was the ultimate act (not the first or only act) of acquiescence which upon the whole of the evidence the court finds was reflective of the continuing acquiescence, not only from the Defendant's parents days, but certainly from his time and continued from on/or around his survey of 1989.

42. Further to this, in 1998 the Defendant purchased more land in the area and this time it was lands on the Claimants' side of the fence line toward the top of the disputes access strip of land. That lot purchased by the Defendant was accessed also by what appears to be both the wardens road and another established reserve road which dissects both the subject built-upon wardens/reserve road and the disputed access strip. Again, what must have been the obvious user of the strip by the Claimants and others, was not acted upon by the Defendant at this time. What followed after this acquisition was that a few years later in 2004/5 the Defendant fenced his original lands – # B40 – thereby leaving the disputed access way for open, unhindered and continued user by the Claimants and others.

43. The detriment suffered by the Claimants as a result of the Defendant's conduct and inaction flows from the 35-40 year improvements and expansion of the homes from wooden shacks to substantial concrete homes; the installation of various domestic utility services including electricity[18]; the settled expectation of the right to reside in and access their homes; the purposeful orientation of the homes toward the Defendant's lands-access strip; the development

[16] His later erection of his fence effectively allowing the continued access to the access strip over his land is evidence of the *conduct*.
[17] The survey plan was exhibited in evidence.
[18] See the exhibited photos.

of the said access strip of land from a track to a 10'/12' roadway by 1986 and a paved road by 2011/12; and the acquisition of motor vehicles from as far back as the 1990's to access the homes.

44. The Defendant threatens to prevent the Claimants' use of the access way and in November of 2017 brings upon the lands a bulldozer intending to destroy and obliterate the roadway, all this in such a way as to defeat the expectation of the Claimants that the Defendant had passively but distinctly encouraged the Claimants in. The said *expectation* was for the use and enjoyment of the disputed access strip of land as a right-of-way for the provision of their domestic utilities and to access to their homes by themselves their servants, licensees and or agents. The expectation and user to date includes the provision of utilities such as electricity poles. This access is not to the exclusion of the Defendant or his servants, licensees or agents. The maintenance of the lands as a roadway is not the responsibility of the Defendant either.

45. An equity has arisen in favour of the Claimants. The court has to look at the peculiar facts of this case to determine how the equity can be best satisfied.

46. The evidence has revealed that there are several persons living in that community that used and now rely upon the access way. However, they were not joined as parties in the claim (or a counterclaim) nor are the Claimants appointed, "Representative Parties" under the rule 21 (or any other) of the CPR.

47. The Claimants' claim and the proved evidence in support, do not assert a right of use, enjoyment or occupation of the strip, to the exclusion of the Defendant. The Defendant, subject to law, is entitled to use any part of that strip along its entire length to access or otherwise enjoy his property without adversely affecting the access and ingress and egress of the Claimants their agents servants or licensees as the case might be.

48. Further still, it appears to the court, that the Claimants cannot directly or indirectly embark on any improvements or works on the said access way that adversely affect the user of the Defendant's remaining lands; for example, cause to be constructed, drains or otherwise such a road surface so designed as to cause or allow the flow of water on to the Defendant's lands or, do such works that impedes in any way the Defendant's access to his lands at any point whatsoever along the length of the access way located upon his lands.

49. The lands belong to the Defendant. The usual rights accorded such an owner persist subject to this judgment order. The Defendant however is not responsible for the maintenance of the roadway or any loss or damage whatsoever, that its condition may cause to anyone whosoever.

50. To be clear, in the absence of a lawful acquisition by the State, the Corporation has no right in its own right, to enter upon the lands/access road to carry out any works without the approval of the Defendant land owner, save for where the Law provides otherwise. These lands are not public/State lands.

Costs

51. The claimants filed a joint claim and were represented by the same Attorney at law. No peculiar issues arose in relation to any one claimant as opposed to the other. The costs are collapsed into one.

52. For the reasons provided above, **IT IS HEREBY ORDERED**:

i. The Defendants' Defence is dismissed. There shall be judgment for the Claimants on their Claim and statement of case and I shall make the following further orders:

(a) A declaration that the Claimant and/or his servants and/or agents have used without let or hindrance all that paved roadway measuring about 10 -12 feet wide and as long as shown and depicted in the said January 16th 2012 survey plan of Nicholas Westmas with and without vehicles for over thirty five years or more to gain access to and egress from their home and for the provision of domestic utilities;

(b) A declaration that the Claimants are entitled to the free use of the said roadway for the provision of domestic utilities facilities only and to pass and repass unhindered along same with or without vehicles.

(c) The Claimants are entitled to a right of way in common with the Defendant over the access way as described in the evidence more or less as 10-12 ft. in width and as bounding with the Defendant's fence and as appears on the ground in fact and as depicted in the photographs tendered into evidence; such access way, its length and breadth and no more, is more particularly depicted and described in the survey plan of Nicholas Westmas of January 16 2012 (Cadastral Sheet G.B.E. 63B 2/d, Ward of Naparima, County of Victoria); for themselves, their servants and licensees, such right away to run with the land and bind third parties;

(d) That the Defendant by himself and the Claimants by themselves or either of them, their servants and agents or howsoever otherwise are restrained from doing or placing

or allowing to be done or placed on the said road reserve anything as would substantially interfere with its normal usage;

ii. An injunction restraining the Defendant and Claimants whether by themselves their servants and/or agents and/or their licensees or howsoever otherwise from:

(a) placing any fence post, survey marks, chain, barrier, gate on or across the said roadway or in any way placing or allowing to be placed in any way form or manner anything restricting preventing blocking obstructing or otherwise interfering with the access to or egress from and/or the enjoyment of the said roadway by the Claimants or the Defendant or their servants and/or their licensees whether on foot and/or with motor vehicles and/or other conveyances at all times and for all purposes or from doing any act by which the Claimants or Defendant might be hindered or obstructed in the free use thereof;

iii. That success in this matter is that of the Claimants, the claimants are jointly entitled to their Prescribed Costs against the Defendant.

DAVID C HARRIS
HIGH COURT JUDGE
AUGUST 7, 2019