

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

SUIT NO. GDAHCV2006/0291

BETWEEN:

**LOUISE MATTHIAS
(By her Attorneys Graeme Stratton and Jacolyne Stratton)**

**DOROTHY GILSTRAP (also known as Dorothy Freeman)
(By her Attorneys Graeme Stratton and Jacolyne Stratton)**

Claimants

and

LENNIE DE GALE

Defendant

Appearances:

Mr. Ian Sandy and Ms. Claudette Joseph for the Claimants
Mr. Richard Williams and Ms. Gennilyn Ettienne for the Defendant

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2009: July 20, 31
2010: March 31
.....

JUDGMENT

[1] **Michel J.:** By Claim Form and Statement of Claim filed on 22nd June 2006 the Claimants, Louise Matthias and Dorothy Gilstrap, claimed against the Defendant, Lennie De Gaile, that -

- (a) By an Indenture of Conveyance dated the 6th day of October 1955 made between Barclays Overseas Development Corporation Limited of the First Part, Eversley William Gittens of the Second Part and Frank Albert Baker of the Third Part and recorded in the Deeds and Land Registry of Grenada in Liber V9 at Page 728, the said Eversley William Gittens conveyed the said property to Frank Albert Baker and thereby granted full right and liberty to the said Frank Albert Baker and his successors in title, the owners and occupiers for the time being of the said property or any part thereof and his or their respective agents and licensees in common with the said Eversly William Gittens and other persons having like right, at all times to pass and repass along the roadway identified on the Plan annexed thereto and marked with the words "TO SILVER SANDS BEACH ROAD FROM GRAND ANSE MAIN ROAD" with or without vehicles and for all purposes.
- (b) By virtue of a Deed of Assent dated the 8th day of June 1963 and recorded in the Deeds and Land Registry of Grenada in Liber L10 at Page 783 the said property became vested in William K. Baker and the First Named Claimant in unencumbered fee simple as tenants in common.
- (c) By virtue of an Indenture of Conveyance dated the 17th day of November 1988 and recorded in the Deeds and Land Registry of Grenada in Liber W14 at Page 680 the said William K. Baker conveyed his undivided share and interest in the said property to the Second Named Claimant in fee simple to hold as a tenant in common with the First Named Claimant.
- (d) By reason of such Ownership the Claimants were at all material times entitled to the use and enjoyment of the Right of Way set out and described above.
- (e) Further or in the alternative the Claimants and their predecessors in title of the said property and several occupiers thereof have for the full period of 48 years, that is to

say from 6th October 1955 up until July of 2003, enjoyed as of right without interruption the use and enjoyment of the said Right of Way described above.

- (f) Since July 2003 and contrary to the aforesaid grant the Defendant has wrongfully obstructed the Claimants' enjoyment of the right of way by installing a padlocked gate on a part of the right of way and affixing to the gate a "KEEP OUT" sign.

[2] And the Claimants seek -

- (a) A declaration that the Claimants are entitled to a Right of Way at all times and for all purposes with or without vehicles and animals over and along the road leading from the Grand Anse Main Road and continuing to the sea shore as shown on the Plan annexed to an Indenture of Conveyance dated the 6th day of October 1955 between Barclays Overseas Development Corporation Limited of the First Part, Eversley William Gittens of the Second Part and Frank Albert Baker of the Third Part and recorded in the Deeds and Land Registry of Grenada in Liber V9 at Page 728.
- (b) Additionally and/or alternatively, a declaration that the Claimants are entitled to use the said Right of Way as a legal right under Section 2 of the Prescription Act, Cap. 252 of the 1990 Revised Laws of Grenada and as appertaining to the Claimants' property.
- (c) An injunction ordering the Defendant to pull down and remove so much of his fence and gate at Grand Anse aforesaid as obstructs the said Right of Way.
- (d) An injunction restraining the Defendant by himself, his agents or servants or otherwise howsoever from placing or allowing to be placed on the said Right of Way anything restricting, preventing or otherwise interfering with the reasonable enjoyment of the said Right of Way by the Claimants, their servants and licensees on foot and with motor vehicles and other conveyances at all times and for all purposes

and from doing any act whereby the Claimants may be hindered or obstructed in the free use thereof.

(e) Damages and interest thereon pursuant to Section 27 of the West Indies Associated States Supreme Court (Grenada) Act, Cap. 336 of the 1990 Revised Laws of Grenada or for such rate and for such period as the Court shall deem fit.

(f) Costs.

[3] An Amended Statement of Claim was filed on 1st November 2006 to correct the date of the Indenture of Conveyance by William K. Baker to the Second Named Claimant from 7th to 17th November 1988.

[4] A Defence was filed by the Defendant on 22nd November 2006 in which the Defendant alleged that the 1955 Indenture of Conveyance did not give the Claimants a right of way over the Defendant's land and that the right of way referred to there and allegedly used by the Claimants' predecessors in title was over other lands of Eversley Gittens and not over the lands owned and occupied by the Defendant. The Defendant also alleged that neither the deed transferring the property in issue to him, nor the deed of his predecessor in title, showed any right of way over the aforesaid property and that the right of way allegedly acquired and used by the Claimants' predecessors in title to get to the sea was over land occupied by the main hotel building of the former Silver Sands Hotel and Beach Resorts and not over the Defendant's land. The Defendant alleged also that he installed the gate referred to in the Statement of Claim to prevent people going through his land and that the Claimants neither have or ever had a right of way over the said land or any part thereof. The Defendant sought a declaration that the Claimants are not entitled to enter or pass over the Defendant's land and an injunction restraining the Claimants, whether by themselves or by their servants or agents or otherwise, from entering, passing over or remaining on the Defendant's aforesaid land.

- [5] Ten witnesses gave evidence in this case, six on behalf of the Claimants and four on behalf of the Defendant; the evidence of a fifth witness for the Defendant was not considered by the Court and his witness statement was stricken from the Court's record.
- [6] The first witness on behalf of the Claimants was the First Named Claimant, Louise Mathias, who gave her evidence from the United States of America via video link. In her witness statement, which she offered as her evidence in chief, she stated that her first trip to Grenada was in 1958 when she, her husband and her daughter (the Second Named Claimant) visited her father, Frank Baker, who had bought the pink cottage from Mr. Eversley Gittens a few years before. That they stayed for about three months. That during that time access to the beach was completely open, one could walk on the road directly to the beach and the road down from the main road ended on the beach. That she visited again in 1962 and 1964 and access to the beach was still completely open as it had been before with no physical restrictions. That from 1977 to 1983 she and her family spent at least three months per year in Grenada and access to the beach was always open as it had been before, except for one time when Mr. Gittens had put up a gated fence to keep out sheep, but he removed it the following year because of public outcry. That from 1989 to 1997 they visited for a month to six weeks every winter and during that period access to the beach was completely open, they always came and went freely to the beach and the passage was wide and clear as usual. That after the death of her husband in the year 2000 she returned to Grenada two or three times only to find that the Defendant had constructed a high, solid wall which cut off their previous air flow off the sea as well as the view. That one year they (referring to the Defendant) narrowed the passage to the beach to 2 or 3 feet and by the next year they actually blocked off all access to the beach, closing it off entirely. That it was her father's understanding when he bought the property that there would always be unrestricted access to the beach from the house and he was assured of his own beach access. That she is now 86 years old and has difficulty walking, but hopes that her daughter and family will have the same access to the beach that she and her husband enjoyed since 1958.

- [7] Under cross examination, Ms. Mathias said that the access road to the beach was wide enough to drive on, but she does not know its actual width. That the access to the beach is blocked. That it was blocked by the Defendant building a wall across the property and leaving a very narrow opening that one could walk through, then later blocking it so that there is now no way to get to the beach.
- [8] The second witness on behalf of the Claimants was the Second Named Claimant, Dorothy Gilsrtap. In her witness statement she stated that her early memories of Grenada date back to when she was 6 years old in 1958 and she spent several months at the pink cottage. That there was no restriction on passage to or from the beach; access to the beach was free and open; the road was about 12 feet wide and simply ended on the sand. That her grandfather, Frank Baker, bought the pink cottage from Eversley Gittens and expected and had direct access to the sea. That complete access to the sea from the house was part of the agreement and he would never have bought it without that access. That she visited Grenada again and stayed in the pink cottage in 1962, in 1964, in 1978, in 1981, in 1983, in 1991 and in 1994 and on all of these occasions beach access was completely open with the road running down from the main road straight to the sea. That for generations her family enjoyed complete freedom to the beach as deeded to her grandfather and as used by them for almost 50 years until the recent infringement of it.
- [9] The third witness on behalf of the Claimants was Graeme Stratton. In his witness statement he stated that he was the lawful attorney of the two Claimants, having been so appointed by duly registered powers of attorney. That at the request of the First Named Claimant and her husband, he and his wife and their children moved into the pink cottage from 1983 and have been living there consistently up to the present time. That the right of way to the beach was as wide as the roadway leading from the Grand Anse Main Road and connecting with the right of way. That he would estimate its width to be about 10 to 12 feet. That unimpeded enjoyment of the right of way continued up until 2001 when the Defendant constructed a building on the right side of the right of way (facing the beach) and fenced the lot of land, leaving only a 2 foot access to the beach where the right of way was located. That in 2003 the Defendant totally blocked access along the right of way by

putting a padlocked gate at both sides of the right of way. That additionally, the Defendant constructed a concrete barrier midway along the right of way so that if someone got past either gate he or she would still not be able to traverse the full extent of the right of way and get to the beach or back to the road. That the Defendant also affixed a "KEEP OUT" sign on both gates. That in 1999 one Saeed Ghaemmaghani – who is the immediate predecessor in title to Jennifer Hosten – purchased a lot, constructed a building on it and fenced the lot, but this did not appear to encroach on the access to the beach. That the Court appointed Mr. Henry Ogilvie, a Licensed Land Surveyor, to conduct a survey to determine the location of the right of way to the beach and on 15th November 2007 Mr. Ogilvie filed his report with the Court, which concluded that the right of way to the beach is substantially as described by him (Graeme Stratton).

- [10] The fourth witness called by the Claimants was Henry Ogilvie, a Licensed Land Surveyor. Mr. Ogilvie testified that he was appointed by the Court as an expert witness to determine the location of the Claimants access road to the beach as shown on the plan annexed to the Indenture of Conveyance dated 6th October 1955 between Barclays Overseas Development Corporation Limited of the First Part, Eversley William Gittens of the Second Part and Frank Albert Baker of the Third Part. That he was asked to give his opinion on the location of the road described in the aforementioned deed. That he read the deed and looked at the plan attached to it, which showed a road in front of the Claimants' property and showed that the road led at one end to the Grand Anse Main Road and at the other end to the beach. That the deed stated that the right of way was granted to Frank Albert Baker over the road from the Grand Anse Main Road, continuing on through other lands of Eversley William Gittens, to the beach. That his interpretation of this was that the road was straight from the Grand Anse Road to the beach and he could think of no reason why the vendor would deliberately state that he was giving a right of way over lands that he owned if that was not his intention.
- [11] The fifth witness for the Claimants was Jacolyne Stratton, the contents of whose witness statement was virtually identical to that of her husband, Graeme Stratton, and need not therefore be repeated.

- [12] After fairly extensive cross examination about the gate put up by the Defendant and its impact on the right of way, Mrs Stratton said in re examination that when the Defendant put up the gate with the "KEEP OUT" sign he blocked part of the right of way and that the other part of the right of way was blocked by a wall, another gate and steps also put up by the Defendant.
- [13] The final witness for the Claimants was Dorset Charles. In his witness statement he stated that he has known the property which is the subject matter of this case for all of his life. That the access road was from the main road to the beach. That there was a section of the road that veered to the right which led to the Silver Sands Hotel, but the access road in general use went straight down from the main road to the beach and was in use for over 54 years. That problems with the use of the access road only developed after the Defendant purchased the property. That the Defendant erected a concrete wall on the access road, encroaching on the road by about 6 to 8 feet. That the Defendant used barbed wire fencing from the beach, fencing the entire road across to his building and leaving only a narrow opening at one time, which he later blocked by erecting a gate on the access road with a "KEEP OUT" sign. That he closed the gate and put a padlock on it, blocking the access road entirely.
- [14] The first witness for the defence was Germaine Pope, who said in her witness statement that she was 80 years old and was employed as a secretary/accountant to Mr. Eversley Gittens, first in his store in St. George's and then when Mr. Gittens purchased the Silver Sands Hotel she went to work there and worked there until about 1966.
- [15] Ms. Pope stated that guests of the hotel and occupants of the cottages would access the beach by turning left from the road which joins the Grand Anse Main Road and entered the beach around the dining room of the Silver Sands Hotel.

[16] Under cross examination, Ms. Pope said that she knew Frank Baker but she does not know Louise Mathias, Dorothy Gilstrap, Graeme Stratton or Jacolynne Stratton and does not know where they passed to get to the beach.

[17] The second witness for the defence was the Defendant himself, Lennie De Gale. In his witness statement he stated that he knows the Strattons. That they live in a cottage directly in front of his property. That he used to see them going to and from the beach by first veering left into the property now known as Jenny's Place and then passing over the old water tank located in the grounds of the Turning Point Restaurant (forming part of Jenny's Place). That Jenny's Place was not fenced at the time so there was a sort of through road there to the beach and access to the beach was gained over that sight. That after Hurricane Ivan, Jennifer Hosten fenced off the area in boundary with the beach, preventing both vehicular and pedestrian passage to the beach. That after that, the Strattons and other residents of Grand Anse who were going to the beach, passed through an area about 2 feet wide between his property and Jennifer Hosten's property, close to where the restaurant is located. That he left an area about 4 feet wide in his property to access the beach from his property. That the locals started trespassing in his access, he was being harassed by the locals for plants and water and it became a burden to him that they were passing there and so he constructed a gate to block their access through that space. That the Strattons approached him and requested his permission for them to continue to pass there but he refused. That the gate is located on "a no man's land" between his and Jennifer Hosten's property, but you can gain passage to his access so he is therefore entitled to prevent anyone from passing through there and as such he has denied public access through it. That the plan of his predecessor in title, Earle Gittens, shows no right of way over his lands.

[18] The Defendant testified that he removed the gate about 3 months after the case had started, but that Jennifer Hosten's husband then blocked the space where the gate was.

[19] Under cross examination, the Defendant said that the space where his gate is located does not belong to him. That he never met Frank Baker and does not know where Frank

Baker would have passed to get to the beach. That he knows the First Named Claimant, who is Mr. Baker's daughter, having first met her between 2001 and 2004. That he does not know how she accessed the beach from 1955, but from the time that he knew her between 2001 and 2004 she was accessing the beach at the back of the property now owned by Jennifer Hosten. That an existing wall shown on the plan by Mr. Ogilvie to the south west of his property was constructed by him on land that does not belong to him, but he does not believe that that wall was constructed on the right of way used by the Claimants and their predecessors in title. That his case is that the Claimants' right of way does not pass over his property, but that it goes left and passes over the Silver Sands Hotel property.

[20] The third witness for the defence was Dr. Glenn Duncan, whose property bounds with the properties of the Claimants and the Defendant. His evidence was that people used to pass across the site where Jennifer Hosten's property is located and would continue along a sandy unpaved road towards the location of an old water tank to the beach and that, apart from that access road, he did not notice any other roads in the area. That it was always Ms. Hosten and not the Defendant who had a problem with people going through her property.

[21] Under cross examination, Dr. Duncan testified that he cannot speak to the right of way that the Claimants and their predecessors in title enjoyed from 1955, but he can speak to how they exercised their right of way between 1995 and 2003 because he has property right next to theirs which he acquired in 1995. That he is not aware that the Claimants have a specific right of way given to them in their deed of conveyance and so he cannot really speak to the Claimants' right of way.

[22] The fourth witness for the defence, who ended up being the final witness in the case, was Emmanuel Frederick, who stated that he was employed at the Silver Sands Hotel from 1963 to 1970 and he knew Mr. Frank Baker. That there was no thoroughfare from the Silver Sands Hotel down to the beach, but a road was opened close to where the De Freitas property is located for the public to get to the beach.

- [23] Under cross examination, Mr. Frederick said that he did not know that Mr. Baker had a specific right of way in his deed and he does not know about Mr. Baker's right of way, but he knows that Mr. Baker used to live in a cottage and like other people who had cottages he passed through the hotel to go to the beach. That he does not know the Claimants or the Strattons and he does not know what happened after 1970 with respect to the property in issue in this case.
- [24] A witness statement given by Mr. Chester Bedeau, a Licensed Land Surveyor, was - by agreement of Counsel for the Claimants and the Defendant - struck out and evidence given by Mr. Bideau was – on application by Counsel for the Claimants – not considered by the Court.
- [25] At the conclusion of the case it was ordered that written submissions in lieu of closing addresses be filed by or on behalf of the parties by Monday 24th August 2009, which was duly complied with.
- [26] The first issue to be addressed arising out of the closing submissions is the issue of whether or not the Claimants' case is to be restricted to the allegation contained in the Statement of Claim that since July 2003, and contrary to the grant of the right of way contained in the deed to Frank Albert Baker, the Defendant has wrongfully obstructed the Claimants' enjoyment of the right of way by installing a padlocked gate on a part of the right of way and affixing to the gate a "KEEP OUT" sign or whether the ambit of the case includes consideration of the alleged obstruction of the right of way starting with the Defendant's earlier construction of a wall, a gate and steps in 2001 and continuing with his installation of the padlocked gate in 2003.
- [27] In the Claim Form filed by the Claimants they have clearly set out the nature of their claim as required by Rule 8.6 of the CPR, the claim being for declarations, injunctions, damages and costs arising out of the Claimants' entitlement to a designated right of way obstructed by the Defendant.

- [28] In the Statement of Claim, the Claimants set out facts on which they relied, but cannot be said to have set out all the facts on which they rely, as required by Rule 8.7 of the CPR, in so far as they intend to rely on the obstruction to the right of way arising not only from the installing of a padlocked gate on a part of the right of way and the affixing of a "KEEP OUT" sign on it in July 2003, but also to on earlier obstructions to the right of way by the erection of a wall, another gate and steps in 2001.
- [29] It cannot however fairly be said that the Defendant was ambushed by the allegations of obstructions to the right of way other than by the installation of the gate in 2003, having regard not only to the general breadth of the Claimants' allegations of obstruction to the right of way, but having regard even to the Defendant's response to the allegations of obstruction to the right of way in his Defence and having regard in particular to the witness statements filed on behalf of the Claimants in May and July 2008 – over one year before the trial of the matter – where the allegation of the 2001 obstruction to the right of way is clearly made in several of the witness statements, particularly the witness statements of Graeme and Jacolyne Stratton (the attorneys for the Claimants) filed on 15th May 2008.
- [30] The learning from cases like **Mc Philemy v Times Newspaper Ltd et al** out of the English Court of Appeal and **East Caribbean Flour Mills Limited v Ormiston Ken Boyea** and **Southern Developers Limited v Lester Bryant Bird et al** out of our own Eastern Caribbean Court of Appeal makes it clear that the pleadings should mark out the parameters of the case that is being advanced by each party or should make clear the general nature of the case, but that witness statements are intended to serve the requirement of providing details or particulars of the pleader's case.
- [31] The general nature of the case or the parameters of the case being advanced by the Claimants was set out in the pleadings in this case as being the obstruction of a right of way granted to the Claimants by the 1955 Indenture of Conveyance by virtue of which their predecessor in title acquired the property and details or particulars of the case, including the instances and modalities of the obstruction, are provided in the several witness

statements filed on behalf of the Claimants. That this is so can best be exemplified by the Defendant's own pleadings and witness statements which address the location of the alleged right of way and essentially contend that it does not pass over the property owned, occupied, fenced or gated by the Defendant, whether in or before July 2003.

[32] The Court is therefore satisfied that the case has proceeded on the basis of the alleged obstruction of the Claimants' right of way by the Defendant by acts undertaken by him since he commenced construction on his property in 2001 and does not regard itself as being limited to considering or adjudicating upon actions undertaken by the Defendant in 2003 only.

[33] The Court is also satisfied on the evidence as a whole that the Claimants are entitled to a right of way at all times and for all purposes with or without vehicles and animals over and along the road leading from the Grand Anse Main Road and continuing to the sea shore as shown on the Plan annexed to an Indenture of Conveyance dated the 6th day of October 1955 between Barclays Overseas Development Corporation Limited of the First Part, Eversley William Gittens of the Second Part and Frank Albert Baker of the Third Part and recorded in the Deeds and Land Registry of Grenada in Liber V9 at Page 728. The evidence reveals that the grantor of the right of way did own the servient tenement at the time and was competent to and did grant the right of way to Frank Albert Baker as the owner of the dominant tenement. The Court is also satisfied that, as a matter of law, the right of way granted passed to the successors in title to the property in question of Frank Albert Baker (the dominant tenement) and equally so passed from the successors in title of the affected property from Eversley William Gittens (the servient tenement), even although it was not specifically mentioned in subsequent conveyances by Mr. Gittens and those acquiring from him.

[34] Having resolved these preliminary issues, the central issue then becomes the location of the right of way, which is mainly what was addressed by the several witnesses in this case. The Claimants and their witnesses essentially contend that the right of way is located on lands on which the Defendant has constructed a wall, built steps and installed gates. The

case for the Defendant at its highest is that there is no right of way to the Silver Sands beach over the land owned, occupied, fenced and gated by the Defendant and that such right of way as the Claimants may be entitled to passes over lands now owned by Jennifer Hosten. The Defendant does however also say that he has removed the obstruction created by him when he installed the gate in 2003, thus conceding somewhat that the Claimants are entitled to a right of way over land gated by him, if not also fenced, occupied and owned by him.

[35] The Court did on 11th December 2006 appoint a Licensed Land Surveyor agreed to by both sides as an expert to determine the location of the Claimants' right of way to the beach and both sides agreed to be bound by his report. Had the surveyor undertaken the exercise more clinically and comprehensively then this case would probably have concluded over two years ago. In his report of 15th November 2007 Mr. Henry W. Ogilvie, Licenced Land Surveyor, concluded that "the road goes through both the De Gale and Hosten properties."

[36] Counsel for the Claimants cast some doubt on Mr. Ogilvie's report in so far as it indicated that part of the right of way was on the property of Jennifer Hosten and not entirely on the property of the Defendant, while Counsel for the Defendant attached no credibility to the Ogilvie Report, including in so far as it suggested that part of the right of way was on the Defendant's property and not entirely on the property of Jennifer Hosten. The importance of the agreement of the two sides to the Report of Mr. Ogilvie is not however their agreement to its contents after it was produced but rather their agreement to its commissioning, the selection of the expert to produce it and to be bound by it, all before its production.

[37] As it is, the report - though not as complete as it ought to have been – concludes that the Claimants' right of way goes through the property of the Defendant and of Jennifer Hosten. This would lead the Court to reasonably conclude that the Defendant did obstruct at least a part of the Claimants' right of way by the construction of his wall, fence and gates, as alleged by the Claimants.

[38] In the circumstances, the Court is prepared to grant a declaration as to the Claimants' entitlement to the right of way, an order requiring the Defendant to remove any obstruction by him of the right of way and an injunction restraining the Defendant from further obstructing it. As to the claim for damages, no evidence whatsoever was presented to the Court that would have enabled it to assess and award damages to the Claimants for any loss that might have been occasioned to them by the obstruction of the right of way by the Defendant. Evidence was not even led to the effect that the Claimants ever desired to and were unable to access the beach because of the acts of the Defendant. The Court cannot in the circumstances assume loss and assess damages and, whereas an award of nominal damages is sometimes made in acknowledgement of the fact that a loss has occurred although no damages have been proved, the Court's declaratory and injunctive awards will suffice to establish and record the Claimants rights and to entitle them to costs without requiring any peg of nominal damages to hang these on.

[39] The Court's order is as follows:

1. This Court declares that the Claimants are entitled to a right of way at all times and for all purposes, with or without vehicles and animals, over and along the road leading from the Grand Anse Main Road and continuing to the sea shore, as shown on the Plan annexed to an Indenture of Conveyance dated the 6th day of October 1955 between Barclays Overseas Development Corporation of the First Part, Eversley William Gittens of the Second Part and Frank Albert Baker of the Third Part and recorded in the Deeds and Land Registry of Grenada in Liber V9 at Page 728.
2. A mandatory injunction is hereby granted ordering the Defendant to remove so much of his gates, his steps, his wall and/or his fence on his land at Grande Anse (where he resides and operates his hotel) as obstructs the Claimants' right of way.
3. A prohibitory injunction is hereby granted restraining the Defendant by himself, his servants or otherwise howsoever from placing or allowing to be placed on the

Claimants' aforesaid right of way anything restricting, preventing or otherwise interfering with the reasonable enjoyment of the said right of way by the Claimants, their servants and licensees, on foot or with motor vehicles and other conveyances, at all times and for all purposes and from doing any act whereby the Claimants may be hindered or obstructed in the free use thereof.

4. Costs to the Claimants to be agreed or otherwise assessed.

[40] The following authorities were cited by Counsel and considered by the Court in this case:

By Counsel for the Claimants –

1. **Conveyancing and Law of Property Act**, Cap. 64 of the 1990 Revised Laws of Grenada
2. **Prescription Act**, Cap. 252 of the 1990 Revised Laws of Grenada
3. Part 32 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000
4. **Pugh v Savage**¹
5. Halsbury's Laws of England, Fourth Edition , Volume 14, Paragraphs 139,141, 142, 144 and 165
6. **British Railways Board v Glass**²
7. **Saint v Jenner**³
8. **Roberts v Gwyrfa District Council**⁴
9. **Colls v Home Colonial Stores Limited**⁵
10. **Mc Philemy v Times Newspapers Ltd et al**⁶
11. **Southern Developers Limited v Lester Bryant Bird et al**⁷
12. **East Caribben Flour Mills Limited v Ormiston Ken Boyea**⁸

¹ [1970] 2 Q. B. 373

² [1965] 2 Ch. 538

³ [1973] 1 Ch. 275

⁴ [1899] 2 Ch. 608

⁵ [1904] A.C. 179

⁶ 1999 Unreported English Court of Appeal decision

⁷ Antigua and Barbuda HCVAP 2006/020.A

⁸ St. Vincent and the Grenadines Civil Appeal No.12 of 200

By Counsel for the Defendant –

1. **Prescription Act**, Cap. 252 of the 1990 Revised Laws of Grenada
2. **Bracewell v Appleby**⁹
3. **Langley v Hammond**¹⁰
4. **Grigsby v Melville**¹¹
5. **Wyllie v Ottley**¹²
6. Emmet's Notes On Perusing Titles And Practical Conveyancing On Title, 7th Edition, Pages 557-581
7. **Batchelor v Marlow et al**¹³
8. **Davis v Whitby**¹⁴
9. **Copeland v Greenhalf**¹⁵
10. **Jelbert v Davis**¹⁶
11. Halsburys Laws of England, Third Edition, Volume 12, Paragraphs 1252 and 1253
12. Halsburys Laws of England, Fourth Edition, Volume 12, Paragraph 1521
13. Halsburys Laws of England, Fourth Edition, Volume 14, Paragraphs 62, 68, 69, 147 and 149
14. Rule 8.7 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000
15. **Eastern Caribbean Flour Mills Limited v Ormiston Ken Boyea**⁸
16. Caribbean Civil Court Practice, Note 2.2
17. Halsburys Laws of England, Third Edition, Volume 22, Paragraph 1611

⁹ [1975] 1 All ER 99

¹⁰ (1868) 3 L.R. 161

¹¹ [1973] 3 All ER 455

¹² St. Vincent and the Grenadines Civil Suit No.575 of 2000

¹³ [2001] EWCA Civ 1051

¹⁴ [1974] 1 All ER 806

¹⁵ [1952] 1 Ch.D. 809

¹⁶ [1968] 1 All ER 1182

18. **Thomas v Attorney General**¹⁷

19. Injunctions & Similar Orders by L. A. Sheridan, Pages 299 - 300

20. **Heidi Binder v Patrick Mcvey et al**¹⁸



Mario Michel
High Court Judge

¹⁷ [1936] 2 All ER 1325

¹⁸ British Virgin Islands Claim No. BVIHCV 2005/0006