

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. S1303 of 2003

BETWEEN

**CHANCOOMARIE BABOOLAL
AND
HECTOR GRAHAM**

Plaintiffs

AND

HASHIM ALI

Defendant

Before the Honourable Mr. Justice Smith

Appearances:

Mr. Persadsingh for the Plaintiffs

Mr. W. Seenath for the Defendant

REASONS

Introduction:

1. The Plaintiffs claim to be entitled to an easement of way some 500 feet long by 15 feet wide over the Defendant's land. They also claim consequential relief in the nature of a perpetual injunction preventing the Defendant from denying them the right to use this easement of way known as Lagoon Road; damages, exemplary damages and costs.

2. I find that:-

(A) On a balance of probabilities, the Plaintiffs have established as a fact that they and their predecessors in title have used Lagoon Road to access their lands for over 35 years and

(B) There is no reason in law why the easement over Lagoon Road could not vest in the Plaintiffs.

In the circumstances, I granted:

(1) A declaration in favour of the Plaintiffs' easement over Lagoon Road,

(2) An injunction restraining the Defendant from preventing the Plaintiffs from using Lagoon Road,

(3) General Damages to the Plaintiffs in the sum of \$3,000.00,

(4) Exemplary damages to the Plaintiffs in the sum of \$5,000.00,

(5) Interest on the damages at 6% per annum from 17th July 2003 to 29th June 2004,

(6) An order for the Defendant to pay the costs of the Plaintiffs.

A. Findings on the Disputed Facts

3. The Second Plaintiff is the common law husband of the First Plaintiff. The Plaintiffs case is that the First Plaintiff (hereafter referred to as “Chancoomarie”) and her family have used Lagoon Road to access their lands from way before her birth (3rd May 1960); more recently, both Plaintiffs have also used Lagoon Road to access lands which they rent from one Jagbir Nowrang. Around February 2003 the Defendant erected fences around his land and cut off access to Lagoon Road.

4. The Defendant purchased the 20 acre parcel of land through which Lagoon Road runs in 1995. He and his witnesses allege that there has never been an easement across his land or any access road or track known as Lagoon Road. The Defendant’s case is that Chancoomarie and her predecessors used to access their land by other roadways or paths and it was only after he cleared his land of the natural forests in or around 1998, that the Plaintiffs began to use Lagoon Road to access the land which the Plaintiffs now rent from Jagbir Nowrang.

5. After hearing the evidence of the witnesses I found that the testimony of Chancoomarie and her witnesses was more credible and consistent than that of the Defendant and his witnesses; therefore, on a balance of probabilities I accept the Plaintiff’s version of the facts as summarized in paragraph 3 above as the truth.

I will now set out as briefly as possible my analysis of the testimony of the witnesses.

Analysis of the Testimony of the witnesses:

6. At the cause list hearing, both parties agreed that the evidence in chief of the witnesses was to be given by way of filed affidavits and that at the hearing, there would only be cross-examination of witnesses.

At the hearing, the witnesses for the Plaintiffs who were cross-examined were, Chancoomarie, Robby Chattergoon, Keith Bachan, David Logan, Harvey Ramrekha and Elaine Teemal. They all filed affidavits in this matter on the 29th January 2004. Counsel for the Plaintiffs indicated that he was not going to rely on an affidavit filed by one Basdai Singh and she was not cross-examined.

The witnesses for the Defendant who were cross-examined were, the Defendant himself, Jagbir Nowrang, and Keith Boodram. They filed affidavits in this matter on the 6th February 2004. Counsel for the Defendant indicated that he was not going to rely on the affidavits of Vidia Nowrang and Ramesh Mungal and they were not cross-examined.

7. Chancoomarie's affidavit gave details of how she, her family, her relatives and other persons who lived in the area, used Lagoon Road for the purpose of accessing their lands. She stated that she grew up in the family home on a three acre parcel of land where the family had a house and that they used the rest of

the land for farming and tending animals. About 18 years ago, Chancoomarie's father had rented a "contiguous" parcel of land comprising 5 acres from Jagbir Nowrang. In 1991, she and her father had 'relocated' their house to this 5 acre parcel. One end of Lagoon Road came directly on to this 5 acre parcel of land and the other end of Lagoon Road came on to an asphalt road called Panchoorie Road. Chancoomarie is now also the tenant of Mr. Nowrang's, 5 acre parcel of land and the Second Plaintiff has been living with her since 1998. In February 2003 the Defendant erected fences around his land which cut off the Plaintiffs' access to Lagoon Road and they had suffered great hardships in accessing their home and farm until they obtained an injunction in September 2003.

In cross-examination, Chancoomarie appeared to be a helpful witness and presented her testimony in a confident manner. However, cross-examination did reveal some inconsistencies in her story.

- (i) She gave conflicting evidence as to the location of a shack which she used. In one instance, she stated that it was on the lands which she was renting (the 5 acre parcel); soon after she stated it was on the lands she owned (the 3 acre parcel).
- (ii) She stated that her grandmother lived on the family land (the 3 acre parcel) and later (and in her affidavits) she indicated that her grandmother lived at Panchoorie Road. In fact, the Plaintiff's brother, David Logan, later confirmed that their

grandmother lived at Panchoorie Road, about two miles away from the family home.

- (iii) While she stated in her affidavit that she and her father had 'relocated' to Mr. Nowrang's lands in 1991, in cross-examination, she stated that they had broken down the house on their 3 acre parcel of land and had relocated to Mr. Nowrang's parcel of land in 1985.

8. Robby Chattergoon stated that he is 71 years old and has lived all his life in the area. He was a rabies worker (bat catcher) employed by the Ministry of Health from his early twenties up to age 65. In the course of his job he used Lagoon Road and got to know Chancoomarie and her family who also used Lagoon Road to access their lands.

Cross-examination of Mr. Chattergoon showed that his memory of date details was poor, however, in other respects he was unshaken. He was honest enough to admit the areas where his recollection was poor and he appeared earnestly to want to speak the truth as far as his memory would allow. His overall testimony was credible and seemed sincere.

9. Keith Bachan stated that he is 45 years old. He is a perifocal operator (responsible for spraying to kill harmful mosquitoes). He has been so employed for the past 23 years and in the course of his employment he has had to visit the Plaintiffs house. To do this he used Lagoon Road.

This witness' evidence was unshaken by cross-examination and he presented his testimony in a candid and forthright manner. I had no difficulty in accepting him as a witness of truth.

10. David Logan, the Plaintiff's brother, stated that he is 46 years old and that Chancoomarie has used Lagoon Road from as far back as he could remember. He is a paraplegic.

In cross-examination I noted some minor inconsistencies in his testimony.

- (i) He gave his date of birth as January 1955, which would mean that he is now 49 years old, whereas, he stated that he was 46 years old in his affidavit.
- (ii) He contradicted himself by stating further that Chancoomarie went to school from the family home on the 3 acre parcel and later by stating that Chancoomarie used to stay at their grandmother's house in Panchoorie Road some two miles away, from whence she went to school. This testimony also contradicted Chancoomarie's cross-examination since she stated that she went to school from her mother's house on the 3 acre parcel of land and not from her grandmother's house.

Apart from these inconsistencies, David Logan's testimony was candid and unshaken. In fact, he gave credence to Chancoomarie's case by affirming that the alternative access routes to the land in question was swamp land and

virtually impassable and also that many other named persons used Lagoon Road.

10. Harvey Ramrekha, a licenced land surveyor prepared a survey plan of the area and it was an exhibit to his affidavit.

Cross-examination of this witness was uneventful. It assisted the Plaintiffs' case by affirming that there was no access road from the lands in question across another parcel (No. 10 on the plan) even though the relevant Deeds stated that there was a road reserve on this parcel of land.

11. Elaine Teemal is the wife of one Randolph Teemal. She stated in her affidavit that her husband owns land in the area and that from in the late 1960's they used Lagoon Road to access their land.

Her testimony was unshaken by cross-examination and I had no difficulty in accepting her as a witness of truth. She complimented the Plaintiff's case as to the use of Lagoon Road since the late 1960s.

12. The Defendant stated in his affidavit that he purchased his land in 1995 and that it was thickly forested with no pathway or access road across it. He alleges that the Plaintiffs have alternate access to their lands through a track known as Dewajit Trace. From information received from Jagbir Norwang (inter alia) he believes that there was never an access across his land and that the Plaintiffs have always used other means to access their lands. It was only after

he cleared his lands in 1998 that the Plaintiffs started to cross it to get to Panchoorie Road and also began to let their animals go on to his lands where they would destroy crops which he planted. To prevent these acts of trespass he erected a fence on the Eastern, Western and Southern boundaries of his land, but the Plaintiffs, on advice from the Police, have constantly cut the fence to access his lands.

Cross-examination revealed the following inconsistencies in his evidence.

- (i) In his affidavit (paragraph 28) the Defendant stated that it was in the year 2000 that the Plaintiffs constructed an incomplete structure on Mr. Nowrang's land and that they live there. In cross-examination he stated at first that he did not know if the Plaintiffs lived in the incomplete structure then later he stated that the Plaintiffs have never lived on Mr. Nowrang's lands.
- (ii) The Plaintiff stated that there are concrete inverts or drains 18 inches wide and 2 feet deep on the Western and Southern boundaries of his land (see paragraphs 29 and 39). He was shown photographs of the Western boundary and asked to indicate where these drains are. He looked at the pictures and stated that he could not see any drains in these photographs. Nevertheless, later on, he actually drew the drains in pencil on the photographs and insisted that this is where the drains are. I saw no such drains or evidence of drains on the photographs.

- (iii) On one occasion he stated that his lawyers never communicated the terms of the injunction to him, then eventually, he admitted that he found out about the terms of the injunction from his lawyers. He even tried to shrug off some blame for errors he made in cross-examination by suggesting that he had not read Chancoomarie's affidavit before he settled one of his affidavits, later on, he modified this by saying that his lawyers "explained" the affidavits to him and he responded. Curiously enough, he could not say if his lawyers explained certain photographs to him, yet his affidavits contain references to these photographs and comments about them (see paragraph 7).
- (iv) The Plaintiff examined certain photographs and indicated to me that the lands were cleared of all vegetation and the little vegetation that he saw was basically bush that had recently grown. When he passed the photographs to me, I actually saw some tall trees, some areas of dense vegetation and trees with solid barks which could not be described as basically bush.
- (v) The Defendant indicated that he could not say if the Plaintiffs lived in the incomplete structure on Mr. Nowrang's lands because he only went to the land once a month where he would spend about 15 minutes, look around and leave. Later on in his cross-examination he stated that he visited the land frequently enough and at night so that he could say that he knew where the Second Plaintiff left his

car at night and that he had in fact “overnighted” on the land on about six occasions.

(vi) His attempt to prove his special damages was pathetic. He resorted to bare guesses and statements like he couldn’t give figures now because it was silly to do so.

(vii) I also noted that the Defendant stated that a lot of the information he had about the Plaintiffs’ whereabouts, such as where they lived, came from Mr. Nowrang. In cross-examination Mr. Nowrang denied ever telling the Defendant any of these matters.

13. The Defendant had no qualms about changing his story to suit what he thought his answer should be to the questions posed by Counsel for the Plaintiff. He glibly ascribed blame to his lawyers for his own inconsistencies. He was even brazen enough to attempt to mislead me on the contents of some photographs. In addition, he was hesitant and evasive when answering what he felt, were difficult questions and seemed to be inventing answers on the spot. I could attach very little credibility to his testimony.

14. Jagbir Nowrang stated in his affidavit that he is 73 years old and has lived all his life in the area. From 1995 and not 1991 (as Chancoomarie contends) he let his 5 acre parcel of land to Chancoomarie for the purpose of cattle farming. At the commencement of the letting, Chancoomarie lived with her husband some distance away at Syfoo Trace and also sometimes at Point Fortin. In the year

2000, Chancoomarie constructed a house on his land without his permission. He denied that there was ever any path, track or roadway through the Defendant's land or any road of any kind known as Lagoon Road. He alleged that access to the Plaintiff's lands and his lands has always been solely through a place known as Dewajit Trace which is to the East of the lands in question. According to him, Chancoomarie lived at her grandmother's house on Panchoorie Road when she went to school.

Cross-examination of Mr. Nowrang revealed some serious inconsistencies.

- (i) Mr. Nowrang was adamant that Chancoomarie's tenancy only commenced in 1995 and definitely not in 1991. This conflicted directly with the receipts tendered by Chancoomarie the authenticity of which was never put in question.
- (ii) Whereas he stated in his affidavit that Chancoomarie lived at her grandmother's house when she went to school, in Re-examination he admitted that he did not know Chancoomarie as a girl and that she did not live at her grandmother's house.
- (iii) Whereas he stated in his affidavit that Chancoomarie lived with her husband at Syfoo Trace and sometimes in Point Fortin, he admitted in cross-examination that he couldn't say from his own knowledge that:
 - a. Chancoomarie lived with her husband at Syfoo Trace or
 - b. That she lived at Point Fortin

- (iv) In paragraph 31 of his affidavit, he alleged that on the 26th August 2003, he visited his land via Dewajit Trace with (inter alia) one Mr. Roderick Jones. In cross-examination he stated quite clearly that he knew no one by the name Roderick Jones.
- (v) He stated that Chancoomarie's father, one Lalman Logan was not his friend yet he later stated that he lived like family with Lalman Logan.
- (vi) He stated that he had not seen the parcel of land which Lalman Logan owned for over 5 or 6 years yet he later purported to describe the present condition of the land.
- (vii) Whereas he had stated in his affidavit at paragraph 20 that Chancoomarie constructed a house on his land in breach of her tenancy agreement in his cross-examination he denied that he ever said this.
- (viii) At one stage he tried to say that he had only been to the waiting room of the court before, and that he had never gone to a counter, but when pressed he had to state that he could not remember if he went to a counter in the court building (where, it is alleged, he signed his affidavits).

15. Interestingly enough, Mr. Nowrang stated that he would not be surprised to hear that Mrs. Teemal used a track across the Defendant's land to get to her land.

It also emerged in cross-examination that Mr. Nowrang had sued the Plaintiffs and was attempting to evict them and there were suggestions that he was siding with the Defendant because the Defendant had offered to purchase his land at a handsome price.

Given the serious inconsistencies in his evidence, and the fact that he had an interest contrary to Chancoomarie, I found that it would be unsafe to attach too much credibility to his testimony.

16. Keith Boodram stated in his affidavit that from about March 1998, the Defendant employed him and other workmen to clear spaces 8 - 10 feet wide along the Western, Southern and Eastern boundaries of the Defendant's land. The whole area was dense jungle with large trees and thick undergrowth. There was never any track, trace or road of any kind which ran through the Defendant's land. After clearing the boundaries and having tractors clear the land, he noticed the Plaintiffs crossing the Defendants land. Further, their animals were allowed to come on to the Defendants lands and to destroy crops they had planted. He reported these incidents at Cedros Police Station. In February they erected a wire fence along the Eastern boundary of the land and the Plaintiffs cut and removed the wire fence. He reported this at the Cedros Police Station. Later they fenced the Western boundary and the Plaintiffs cut and removed the wire fence. Again, he reported this at the Cedros Police Station.

Cross-examination of this witness revealed certain inconsistencies in his testimony.

- (i) Whereas he spent a lot of time clearing trees on the boundaries, he could not tell if there were any coconut trees (a tree with a distinctive and easily recognisable bark) on the Eastern Boundary.
- (ii) Whereas in his affidavit he gave three distinct occasions when he went to the Cedros Police Station to make reports, in cross-examination he stated that he did not make any reports but carried other persons to the Police Station to make reports while he stayed outside. Further, he stated that it was only once that he carried these persons to the Police Station.
- (iii) Contrary to the evidence of all witnesses and the plan presented, this witness was prepared to state that Dewajit trace came down to the Defendant's land up to a certain point.

Having regard to the nature of the inconsistencies in his testimony and also the fact that he was an employee of the Defendant and seemed to want to protect his employer's interest, I found that it would be difficult to accept his testimony as either credible or independent.

17. An analysis of the evidence shows that both Chancoomarie and the Defendant gave evidence that contained material inconsistencies, however, for the reasons stated in paragraph 13 above, I found that the evidence of the

Defendant was almost devoid of all credibility and I preferred the testimony of Chancoomarie.

As for the supporting witnesses; those who testified for the Plaintiff presented credible evidence and, in the case of Mr. Chattergoon, Mr. Bachan, Mr. Ramrekha and Mrs. Teemal, they proved to be neutral and independent witnesses with no interest to serve in this matter.

Therefore, on a balance of probabilities, I preferred the testimony of Chancoomarie and her witnesses to that of the Defendant and his witness and I find as a fact that the Plaintiffs and their predecessors in title have used Lagoon Road from since (at least) in the late 1960's up to when the Defendant purported to block the access to it in February 2003.

B. Findings on the Law:

18. Before proceeding further it would be helpful to familiarize lay persons with some basic propositions of law and some legal terminology.

An easement is a right over land that runs with the land. Once established, it attaches to and forms part of the land. It is not a personal right.

The parcel of land which acquires the benefit of an easement is called the dominant tenement. In this case, the lands owned and rented by the Plaintiffs are allegedly, dominant tenements.

The parcel of land which serves the dominant tenement is the servient tenement. In this case, the Defendant's parcel of land is allegedly, the servient tenement.

19. Counsel for the Defendant submitted firstly, that on any version of the facts, the Plaintiffs would not be entitled to claim an easement here since they were merely tenants of the dominant tenement and the claim to an easement must be made by one fee simple owner against another.

Secondly, Counsel for the Defendant submitted that there was no proof that any of the owners of the servient tenement knew of the use of Lagoon Road by the Plaintiffs and their predecessors in title, and this was fatal to the claim for an easement.

20. In support of the proposition that a tenant could not claim the benefit of an easement, Counsel cited from the decision of Edo J. in the case Majid v Bepath H.C.A. 882 of 1976, where the learned judge stated at pages 4 and 5:-

“Moreover where a person is making a prescriptive claim, he can only do so if both he and the servient owner are ‘fee simple’ owners.

Paragraph 1183 of Halsbury’s Laws of England, 3rd edn. at p. 546 puts the matter thus:

“In all prescriptions, except as regards prescriptive claims to light under the Prescription Act, 1832 (c/f Prescription Ordinance Ch. 5 No. 8) the grant which is presumed is a grant by the owner of the fee simple of the servient tenement to the owner of the dominant tenement. The whole theory of prescription at common law militates against the presumption of any grant or covenant by anyone except an owner in fee. For this reason where an easement is claimed by prescription, it must be claimed in favour of the fee simple of the servient tenement and no easement can be claimed by prescription for an estate or interest less than a perpetual one. For the same reason a tenant cannot acquire an easement by prescription against his landlord.....” (my emphasis)

21. In support of the second proposition, Counsel for the Defendant cited several cases which, he alleged, showed that the owner of the servient tenement must know of the easement in question and that a Plaintiff had to establish this knowledge by the servient owner before he could succeed in claiming an easement.

See: (Davies v Du Paver (1952) 2 All E.R. 991

Sturges v Bidgman (1879) 11 Ch D 852

Burrows v Lang (1901) 2 Ch D 502

Union Lighterage Co. v London Graving Dock Co (1902) 2 Ch D 557

Gale on Easements 14th ed pgs 179 et seq)

The most concise statement of the law is from Gale on Easements where it is stated that “The enjoyment must be one of which the servient owner has knowledge either actual or constructive” (my emphasis) (and see also Halsbury’s Laws of England 4th ed Vol.14 paragraph 84 with respect to constructive knowledge).

22. I disagreed with these submissions for the following reasons:

With respect to the issue of the Plaintiffs of the dominant tenement being tenants and being unable to claim an easement by prescription, I find that:

- (a) The Plaintiffs do not only claim the easement over Lagoon Road as tenants.
- (b) In any event a tenant can obtain the benefit of an easement over the lands of a stranger on behalf of his landlord.

With respect to the issue of the owners of the servient tenement not knowing of the user over Lagoon Road, I find that:

- (c) The very public user of Lagoon Road would have fixed them with constructive knowledge of the user and,
- (d) In a case of long user such as exists here, there is a presumption that the owners knew of the user.

(a) The Plaintiffs claim not only as tenants:

23. Chancoomarie is presently the owner of the 3 acre parcel of land which had been the family land from before 1957 (see Deed of lease from Basmateah and Lalman Logan to Trinidad Petroleum Development Co. Ltd. Exhibit "C.B. 6"). On the evidence presented, her predecessors in title and herself, as fee simple owners of this parcel of land, have always used Lagoon Road up to the present time and are entitled to claim an easement over it even though the dominant tenement is not contiguous to the servient tenement (see Pugh v Savage (1970) 2 All E.R. 353 and see Halsbury's Laws of England 4th ed Vol. 14 para 144). The fact that she also rents Mr. Nowrang's 5 acre parcel of land does not affect the claim to the easement in favour of her 3 acre parcel of land.

(b) Tenants can claim the benefit of easements in certain cases:

24. The citation used by Counsel for the Defendant in support of the proposition that only a fee simple owner can claim an easement, does not support this contention. The case cited (Majid v Beepath) and the reference to Halsbury's Laws of England are authority only for the proposition that a tenant cannot claim an easement against his own landlord. In fact, the citation from Halsbury's Laws of England was incomplete and the quotation ended in the middle of a sentence; the rest of the sentence read "but by user over the land of a stranger he (the tenant) may gain a prescriptive right in fee for his landlord, which he will be able to enjoy as his tenant." The citation is also supported by

the case Pugh v Savage (cited above). The facts and the ratio of that case make this point too clear for argument.

It must also be remembered that an easement is not a personal right, but it runs with the land.

In the present matter, I accept the evidence of Chancoomarie that even Jagbir Nowrang used Lagoon Road to access his lands. Further, for the reasons stated in paragraphs 15 and 16 above, I reject his testimony that he never used Lagoon Road and/or all his attempts to establish that the sole access to his 5 acre parcel of land was via another route (Dewajit Trace).

The undisputed evidence is that he purchased his 5 acre parcel of land since 1951, and I find as a fact that he has always used Lagoon Road to access his land. Therefore, his 5 acre parcel of land is also one of the dominant tenements for the benefit of which there is an easement over Lagoon Road. The Plaintiffs, as his tenants, can enjoy this easement over Lagoon Road, on his behalf (in addition to Chancoomarie's right to enjoy the easement as owner of the 3 acre parcel). Therefore the status of the Plaintiffs as tenants of Mr. Nowrang does not, of itself negate their right to bring an action to enforce an easement over the land of the Defendant.

(c) The knowledge of the owners of the servient tenement:

25. In the cases cited on this issue by Counsel for the Defendant, the facts indicated that the servient owners had neither the actual knowledge nor the means of knowing (constructive knowledge) of the easements claimed.

In the present matter, the evidence is that Lagoon Road was an established track used by members of the community to access their lands. It was wide enough to, and did actually accommodate bull carts and farmals (a type of agricultural tractor). The evidence in this case is that no one ever saw the former owners of the land in the area, so that they cannot be fixed with actual knowledge of the user of Lagoon Road. However, the evidence of the nature of the use of Lagoon Road shows that, had the owners of the servient tenement ever visited their land, they would have been readily aware of this easement which was enjoyed by Chancoomarie and her predecessors in title. They had the means of knowledge or the constructive knowledge of this easement, and the Plaintiffs' claim cannot be defeated on this ground.

(d) The presumption of knowledge:

26. In Pugh v Savage Cross L.J. stated at page 359:

“When long user – here user for 36 years – of a way has been shown, I think that the law should support it if it can, and that we ought to presume, in the absence of any evidence to the contrary, that the owners of (the servient tenement) knew of the user and that (the predecessor of the owner of the servient tenement) knew of it.”

This proposition is also supported by the textbook writers (see Gale on Easements 14th ed pg 184).

In the present matter the evidence establishes user of Lagoon Road since at least the late 1960's (and perhaps even before). This long user of more than

35 years is enough in my opinion to raise the presumption of knowledge in the owners of the servient tenement of the user of Lagoon Road; the Plaintiffs' claim cannot be defeated on this ground.

27. Bearing in mind my findings in paragraphs 22 to 26 above, the Defendant's challenges on the law do not defeat the Plaintiffs' entitlement to the benefits of an easement over Lagoon Road.

THE RELIEF:

28. Having regard to all of my findings, I granted the declaration and the injunction prayed for (see paragraph 2 above).

An issue arose as to damages.

29. Counsel for the Plaintiffs asked for general damages for the interruption of the easement. Counsel also asked for exemplary damages based on the second limb of Rookes v Barnard (1964) A.C. 1129, namely to compensate for the conduct of the Defendant which had been undertaken in the belief that the gain to him would have exceeded compensation payable to the Plaintiffs. Counsel suggested the sum of \$20,000.00 as general damages and \$25,000.00 for exemplary damages.

30. Counsel for the Defendant submitted that the grant of the injunction in this matter obviated any claim for general damages save for a nominal award which should be in the vicinity of about \$500.00. Further, this was a case of a Defendant acting reasonably to secure his property and not a fit case for an award of exemplary damages.

31. While it is true that the grant of the injunction lessened the inconvenience suffered by the Plaintiffs I considered that the injunction was granted in September 2003 some seven months after the Defendant blocked off Lagoon

Road (February 2003) and that in the interim the Plaintiffs had to use alternative access routes that were longer, highly inconvenient and treacherous (across muddy land and thick, swampy vegetation). Only one case cited by Counsel for the Plaintiffs dealt with an award of general damages for blocking a right of way. In H.C.A. 2133 of 1985 Romain v Homesites Ltd. the sum of \$2,500.00 was awarded for this category of loss. Bearing in mind the special circumstances of the interruption to the use of Lagoon Road, as mentioned above, I granted the sum of \$3,000.00 as general damages.

32. With respect to exemplary damages, I noted the evidence that the Defendant was attempting to buy out the Plaintiffs, Mrs. Teemal, and Mr. Nowrang for the purposes, as he admitted, of development of the land for, possibly, fish farming. The existence of this easement through the middle of his lands would have seriously affected his plans. Also the refusal of the Plaintiffs to sell their lands or to give up their easement would quite probably also have affected his plans. I accepted the suggestion of Counsel for the Plaintiffs that the Defendant's actions were designed to put pressure on the Plaintiffs to leave their lands and/or to sell them to him possibly at a reduced price and/or to give up their easement over Lagoon Road and this would have outweighed the costs of compensation to the Plaintiffs. I also noted that the Defendant graded over the land in August 2003 when an application for an injunction was pending and after having been advised by the Police to cease interfering with the Plaintiffs'

easement. The Defendant was intent on furthering his cause and was willing to resort to devious practices to do so.

This, in my opinion, was a fit case for an award of exemplary damages. Bearing in mind the cases cited by Counsel for the Plaintiff which dealt with local awards for exemplary damages, (H.C.A.1816 of 1985 and H.C.A. 141 of 982) and the special circumstances of this case, I granted the sum of \$5,000.00 as exemplary damages.

33. I also awarded interest on the damages at 6% per annum (being half of the statutory rate) from the 17th July 2003 (being the date the action was commenced to the 29th June 2003 (the date of my judgment), and ordered the Defendant to pay the costs of the Plaintiffs.

Dated this 5th day of August 2004

Mr. Justice Smith
JUDGE