



[2026] JMSC Civ 88

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2023CV01578

BETWEEN	NAVROLI LIMITED	CLAIMANT
AND	MELITA PARSONS	1 ST DEFENDANT
AND	ERNEST COVER	2 ND DEFENDANT
AND	NORMA CONSTANCE MCHUGH	3 RD DEFENDANT
AND	LLOYD SAMUEL RICHARDS	4 TH DEFENDANT
AND	PAUL ROBERTS	5 TH DEFENDANT
AND	ERIC PARSONS	6 TH DEFENDANT

Mr Rowan Mullings attorney-at-law for the Claimant

Mrs Alexis Robinson and Mr Joshua Page instructed by Myers Fletcher & Gordon attorneys-at-law for the Defendants.

June 24-27, 2025, September 25, 2025, July 9, 2026

Land Law - Trial – Easement – Caveats – Trespass to land – Nominal damages – Who has the burden of proof when owner of land applies to Court to have caveat lodged on his title removed – Easement over land not adjacent to dominant tenement – Whether the wording contained in the Instrument of Transfer created a valid easement – The Registration of Titles Act, S. 70 and 140.

T MOTT TULLOCH-REID J

APOLOGIES

[1] For various reasons, this decision is long overdue. The Court regrets the considerable delay in the delivery of this judgment and apologizes unreservedly to the parties for the delay. The issues raised in these proceedings were of significant importance to the parties, who were entitled to have the matter determined within a reasonable time. The delay is sincerely regretted.

BACKGROUND

[2] This matter concerns access to a beach in Discovery Bay, St Ann. Lot 1, land part of Market Beach, Discovery Bay in the parish of Saint Ann registered at Volume 1066 Folio 170 of the Register Book of Titles ("Lot 1") adjoins the beach. Lot 1 is owned by the Claimant. The 1st – 4th Defendants are owners of lands approximately 1 mile away from the beach. Their properties are not adjacent to the beach, but they allege that the titles to their respective properties have granted them an easement over the beach and that they can use it (the beach) at their convenience. They have lodged caveats to protect their perceived rights to access the beach. The 5th Defendant owns his property along with the 1st Defendant and the 6th Defendant who is not an owner of any property, is joined because he has from time to time entered on to the beach without the consent of the Claimant.

[3] Mr Winston Johnston is the Claimant's director and is one of its shareholders. He is the Claimant's main witness. His Affidavit supports the Fixed Date Claim Form which initiated the claim. The Claimant's claim against the Defendants is for:

- a. the Defendants to show cause pursuant to section 140 of the Registration of Titles Act why the caveat lodged by the 1st to 4th Defendants against Lot 1 should not be removed.

- b. a declaration that the expression at paragraph 2 of the Transfer Deed recorded as Transfer Number 471016 on the Claimant's title does not create a valid easement. Paragraph 2 of the said document reads as

“To the intent that same shall attach to and run with the land the subject of this Transfer the Transferor and the Transferee hereby reserve full and free right and liberty to the registered proprietors for the time being of any lands now or formally comprised in Certificate of Title registered at Volume 839 Folio 14 of the Register Book of Titles together with their respective servants and invitees at all times hereafter by day or night to enter upon and to pass and repass along over and upon the said land hereby transferred for the purpose of using the beach situate thereon, for swimming and bathing. ”

- c. a declaration that the circumstances giving rise to the creation of any purported easement to which the Claimant's property is subject and on which the Defendants rely are not according to law and are void.
- d. an order directing the Registrar of Titles to cancel or remove the caveats lodged by the 1st to 4th Defendants if not sooner withdrawn by them.
- e. damages for trespass to real and personal property.
- f. an injunction restraining the Defendants their respective agents, servants and invitees from entering upon Lot 1 and removing or destroying any lock on the gate thereof or any part of the perimeter fence around Lot 1.
- g. Costs

Issue 1: Where does the burden of proof lie when the title owner asks for cause to be shown why a caveat lodged should not be removed.

[4] Section 140 of the Registration of Titles Act (the “RTA”) provides that

“Upon the receipt of any caveat under this Act, the Registrar shall notify the same to the person against whose application to be registered as proprietor, or as the case may be, to the proprietor against whose title to deal with the estate or interest such caveat has been lodged, and such applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he thinks right, summon the caveator to attend before the Supreme Court, or a Judge in Chambers, to show cause why such caveat should not be removed, and such Court or Judge may, upon proof that such caveator has been summoned, make such order in the premises, either ex parte or otherwise, and as to costs as to such Court or Judge may seem fit.”

The wording of the RTA says that the caveator must show why the caveat should not be removed. The burden lies with the caveator who must show cause why the caveat should not be removed but should remain on title. Case law assists the Court in treating with this issue. The Privy Council decision of **Eng Mee Yong and ors v Letchumanan s/o Velayutham [1980] AC 331** out of Malaysia is helpful. In explaining how the caveat under the Torrens system works, Lord Diplock likened a caveat to a statutory injunction of an interlocutory nature which restrains the owner of the property from dealing with his land until the Court has finally dealt with any claim the caveator makes to the land. At page 336 of the decision Lord Diplock said that

“it is for the caveator to satisfy the court that there are sufficient grounds in fact and law for continuing in force a caveat which prevents him from doing so.”

Lord Diplock went on to say that because the caveator has no registered title to rely on as *prima facie* evidence of his interest in the land, it is for him to satisfy the Court that there are sufficient grounds in fact and law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat.

[5] Given the similarity between an injunction and a caveat in terms of their function, the Privy Council observed that the grant of an injunction is a matter within the court's discretion. It further held that, pursuant to section 327 of the National Land Code Malaysia, the court may make such orders as it considers appropriate upon an application for the removal of a caveat. In deciding whether to exercise its discretion in favour of the applicant, the court must consider whether the balance of convenience favours the grant of the injunction and whether the claim is neither frivolous nor vexatious. Lord Diplock stated that a similar burden applies to a caveator when a caveatee applies under section 327 for the removal of a caveat. The caveator must first demonstrate, based on the evidence before the court, that the claimed interest in the property raises a serious question to be tried. If this threshold is met, the caveator must then establish that the balance of convenience favours maintaining the status quo pending the trial by preventing the caveatee from disposing of the land to a third party.

[6] Mrs Robinson submits that the **Eng Mee Yong case** is distinguishable as it dealt with an interlocutory application pending trial. She argues that here the trial has been dealt with and a determination is to be made as to whether the Claimant has a valid claim for the caveats to be removed. I do not agree with her entirely. On the issue relating to the summoning to show cause why the caveat should not be removed, the burden lies with the caveators. On the other issues raised on the claim, i.e. declarations sought and creation of easements – the burden is the Claimant's on the basis that he who asserts must prove. When a caveat is lodged, it is to protect an interest the caveator believes he has until the caveator does something to confirm the interest in the property he is saying he holds. In this case, the caveators lodged the caveat but did nothing more. The caveats

were lodged in 2018 but the caveators did nothing else. In **Eng Mee Yong**, the caveators started an action for specific performance and then lodged a caveat. In **Silver Sands Estates Limited v Lorenz Redlefsen [2022] JMCA Civ 28**, Mr Redlefsen filed a claim for breach of contract in lieu of or in addition to specific performance and then lodged caveats against five of the lots for which he claimed an interest. In each case, the caveator had a claim and then lodged a caveat to protect its interest. Here, the caveators lodged a caveat and did nothing more. They brought no claim and, in that regard, justice demands that Section 140 of the RTA be given its literal interpretation so that the caveator is to show cause why the caveats should not be removed. “*To show cause*” means to prove. The burden lies with the caveators (i.e. the 1st to 4th Defendants).

Issue 2: Whether the 1st to 4th Defendants have shown cause why the caveats should remain on title.

[7] The 1st to 4th Defendants’ statement of case asserts that they have a right to access the beach on the basis that both the Deed of Transfer and the Claimant’s title both express a right in favour of the owners of land which was formerly Part of land registered at Volume 839 Folio 14 or any part thereof, as set out in the transfer. The transfer to the Claimant as noted on the Duplicate Certificate of Title reads as follows:

“Transfer No 471016 registered 23rd August, 1988 to Navroli Limited at Discovery Bay, Saint Ann. Subject to the rights in favour of the registered proprietors of the land comprised in Certificate of Title registered at Volume 839 Folio 14 or any part thereof as set out in the Transfer.”

The lands which the caveators own in Discovery Heights were formerly part of lands formerly registered at Volume 839 Folio 14.

[8] The Instrument of Transfer numbered 471016, by which Lot 1 was transferred from Discovery Beach Limited to Navroli Limited is dated May 6, 1988. Paragraph 2 of the document reads as follows:

“Whereas the Transferor is registered as the proprietor of an estate in fee simple in the land described at Item 1 of the schedule hereto (hereinafter referred to as “the said land”) comprising a beach lot intended for the use of the registered proprietors of lots in the subdivision of part of Bridgewater part of Discovery Heights in the parish of Saint Ann free from encumbrances other than the restrictive covenants and easements endorsed on the certificate of title therefor.”

The Deed witnesseth that in consideration for payment of the agreed sums, Discovery Beach Limited would transfer to the Claimant *“all its estate and interest and all the estate and interest which it is entitled or able to dispose of in the land subject to the restrictive covenants and easements endorsed on the Certificate of Title therefor and to the rights hereinafter appearing”*. Also included in the Instrument of Transfer is the following wording:

“To the intent that same shall attach to and run with the land the subject of this Transfer the Transferor and the Transferee hereby reserve full and free right and liberty to the registered proprietors for the time being of any lands now or formally comprised in Certificate of Title registered at Volume 839 Folio 14 of the Register Book of Titles together with their respective servants and invitees at all times hereafter by day or night to enter upon and to pass and repass along over and upon the said land hereby transferred for the purpose of using the beach situate thereon, for swimming and bathing”

[9] The 1st to 4th Defendants’ titles were splintered from Volume 839 Folio 14 and to that end based on the Claimant’s own title and the Instrument of Transfer which transferred Lot 1 to it, the Defendants argue that they have a right of way over Lot 1 so that they can access the beach.

[10] The 1st to 4th Defendants in relying on the Claimant’s Certificate of Title, which is indefeasible (see Section 68, 70 and 71 of the RTA), have satisfied me that there is a reason for the caveat to remain on the Claimant’s title. The Claimant’s Title itself, on its

face, gives the 1st to 4th Defendants, together with their respective servants and invitees a right to enter upon, pass and repass over Lot 1 to access the beach and that they can do so whether by day or night for the purpose of using the beach for swimming and bathing. Showing cause gives the caveators standing in these proceedings to raise their defence. This however, does not end the matter as the question arises as to whether or not the easement as noted on Title to Lot 1 is a valid one.

Issue 3: Whether the easement noted on Certificate of Title to Lot 1 is a valid easement

[11] The Claimant has raised the issue of the validity of the easement and as such it has now assumed the burden of proof. The Claimant must show that the easement is not a valid one, has no legal effect and is void.

[12] Counsel for the respective parties raised several interesting issues in their submissions, including the intention of the parties, beach rights pursuant to the Beach Control Act, the purposes for which Discovery Beach Limited and Navroli Limited were established, and the circumstances surrounding the transaction. While those matters provide useful historical context, they are not determinative of the issue before the Court. The Court is concerned with whether the Instrument of Transfer created a valid easement, and that question must be determined by construing the language of the Instrument and the relevant entries on the Certificate of Title. Accordingly, the Court must examine the wording of the Instrument and the Title to determine whether a valid easement was created, notwithstanding the events and intentions that preceded the inclusion of the impugned words on the Title.

[13] In order to answer the question, I go back to basic principles of easement and rely on the work of Professor Gilbert Kodilyne in his text Commonwealth Caribbean Property Law 4th edition. At page 155 of the text, Professor Kodilyne sets out the requirements of a valid easement. He defines an easement as:

“a right attached to land (the dominant tenement) that gives the owner of that land a right to use the land of another (the servient tenement) in a particular way, or to prevent the servient owner from using the servient tenement in a particular way.”

In the matter before me, the owners of property in Discovery Heights wish to use the servient tenement (Lot 1) in a particular way. The owners of Discovery Heights wish to use Lot 1 to pass through to the beach.

[14] For an easement to be said to exist there must be a dominant and servient tenement. The right of the easement must be appurtenant to land. This simply means that the legal right of easement belongs to the property itself and not to the owner. When the right belongs to the property, it means that it automatically transfers to subsequent owners of the property – whether ownership is acquired through inheritance, purchase or adverse possession.

[15] The property owned by the owners in Discovery Heights of which Mr Winston Johnston is one, would benefit from an easement if one exists. Their lands would be described as the “dominant tenement.” Lot 1 would be the “servient tenement” as it serves the land owned by the owners of Discovery Heights.

[16] Mr Johnston’s evidence is that the Claimant is the registered proprietor of Lot 1. Lot 1 was transferred to the Claimant by Discovery Beach Limited, the previous owner. The Instrument of Transfer purported to create an easement to the owners of lands which were previously a part of Volume 839 Folio 14. That is the title from which the 1st to 5th Defendants derive their titles. According to Mr Johnston when Discovery Beach Limited purported to create an easement over Lot 1 for the benefit of the owners of land part of Volume 839 Folio 14, it had no authority to do so as it did not own the lands that comprised that Volume and Folio number. Lot 1 was never a part of lands known as Volume 839 Folio 14 but was a part of another piece of land which Discovery Beach Limited had previously owned. He maintains that the Defendants’ lots are in Discovery Heights, over

a mile away and that while Lot 2 has a registered easement over Lot 1, clearly shown on the plan, there was never free and open access by the Defendants over Lot 1.

[17] His evidence is that George Kirby who was successor in title of Lot 2 Market Beach had erected a wall with a steel gate along the perimeter of Lots 1 and 2 with the main road. The gate was kept locked and entrance to the Lots was restricted to the owners of Lots 1 and 2. He says he was told in the sales pitch of beach use, not beach rights, and because of that he explored, through attorneys-at-law, whether an easement could be endorsed on the titles held by the Discovery Heights lot owners. He contacted some lot owners, collected duplicate titles and cheques for legal fees and wrote letters in 2008 in pursuit of that objective.

[18] His evidence however is that the Registrar of Titles would not endorse the easement, the documents and monies were returned and some lot owners indicated that they did not wish to go further. He says that only after that did he seek to acquire Navroli on behalf of those willing to bear the expense, but no one outside the present shareholders contributed to the liabilities, restoration or upkeep of the company. He says that his shareholding required significant expenditure to restore the company to an operational status and to settle its outstanding liabilities, including penalties, taxes and legal fees. He says that the funds used were from the joint account of himself and his wife and that no other person contributed to the expenses of the company. He also says that he expended material sums in preserving Lot 1, including the demolition of a derelict beach house and the construction of a restaurant. He further says that the Defendants' caveat applications made no assertion of any interest in Navroli Limited or Discovery Beach Limited.

[19] What is the intended purpose of the lots in Discovery Heights? Can the intended purpose of the lots be enjoyed without reference to the servient tenement? If the answer to the question is yes, then an easement does not exist. Do the owners of the lots in Discovery Heights have to be able to access the beach for them to enjoy their lots? If the

answer is no, then an easement does not exist. If as in the case of **Hart v Pierce (1967) 11 WIR 179** the owners of the dominant land had to cross adjoining lot (the servient tenement) to reach the beach, then an easement exists. The easement exists because access to the beach would enhance the use and enjoyment of the dominant tenement. But in **Hart v Pierce** the lots adjoined each other. In the case at bar, Discovery Heights as outlined on Google Maps does not adjoin Lot 1 and is in fact some distance away from Lot 1. While the lots do not have to be directly adjacent, they must be close enough for the dominant tenement to derive a practical benefit from the right.

[20] At page 156 of his text, Professor Kodilyne gives as example of how the dominant and servient tenements are established. I rely on the wisdom of the example.

“If X the owner of Whiteacre, grants to Y, who does not own neighbouring land, the right to use the pathway running across Whiteacre, Y’s right cannot be an easement. It is a privilege that is personal to Y, as there is no dominant land to which the right can be said to be attached. Y’s right will be at most a mere licence. But if Y is the owner of adjoining land, Blackacre, then the right will be an easement (assuming the other requirements of an easement are satisfied), since X has granted the right not to Y personally but to Y in his capacity as owner of Blackacre, and the right may be said to have been granted for the benefit of Blackacre. ...”

It appears from the explanation that there must be some proximity between the dominant and servient tenements for the easement to exist. This makes sense because if the servient tenement is to benefit the dominant tenement they should have enough physical closeness. An easement is not created because it provides personal convenience to a landowner, an easement exists to ensure that the dominant tenement can be fully utilized and enjoyed for its intended purpose.

[21] In the case of **Re Ellenborough Park [1956] Ch 131** an easement was created because the purchaser was granted the right to have full enjoyment of a playground which was set out and made in front of his land. Evershed MR made it clear that the test of

connection to the property was important in establishing that an easement existed. He said that just as a use of garden enhances and is connected with the normal enjoyment of the house to which it belongs, so also would the right granted for the full enjoyment of the playground be closely connected with the use and enjoyment of the part of the premises sold.

[22] Is there a connection between the Discovery Heights property and Lot 1? In the **Re Ellenborough Park case** the playground adjoined the house lots and as such there was an obvious connection. In the case at bar, Lot 1 is not connected to the Discovery Heights properties. The right to use the beach is not in my view essential to the use and enjoyment of the lots which were previously a part of Volume 839 Folio 14. It is not an easement if the right over the servient property is for the purpose of “recreation and amusement.” Evershed MR had this to say:

“We do not think that the right to use a garden of the character with which we are concerned in this case can be called one of mere recreation and amusement, ... No doubt a garden is a pleasure - on high authority, it is the purest of pleasures - but, in our judgment, it is not a right having no quality either of utility or benefit as those words should be understood. The right here in suit is, for reasons already given, one appurtenant to the surrounding houses as such, and constitutes a beneficial attribute of residence in a house as ordinarily understood. It's used for the purposes, not only of exercise and rest but also for such domestic purposes as were suggested in argument - for example, taking out small children in perambulators or otherwise - is not fairly to be described as one of mere recreation or amusement, and it's clearly beneficial to the premises to which it is attached.

[23] It seems to me that the right to pass and repass over Lot 1 for the purpose of using the beach adjoining it for swimming and bathing is a right of use for “mere recreation and amusement.” If this is true, the Instrument of Transfer did not create an easement but merely gave the owners of lots part of Discovery Heights a licence of sorts to go through

Lot 1 to access the beach. The Registrar of Titles informed Ms Necia Evans, attorney-at-law who acted for the parties, that it was not possible to endorse the easements on the dominant titles. Mrs Robinson for the Defendants submitted that no reasons were given for that decision and that Mr Johnston should have inquired further. However, based on my interpretation of the wording on the Instrument of Transfer, the response of the Registrar of Titles is consistent with an interpretation of the Instrument of Transfer that no easement had been created.

[24] I agree with Mr Mullings' submissions that the Instrument of Transfer does not specify the location of the easement on Lot 1. Ordinarily, the precise route of an easement is identified on the deposited plan or a survey diagram. However, the survey diagram on which the parties rely does not delineate any easement route. This presents a difficulty, as it is unlikely that the parties intended the owners of the dominant tenements to have unrestricted access over the entirety of Lot 1 in order to access the beach. Even if Discovery Beach Limited had intended to create an easement, the defects in the drafting of the Instrument of Transfer were such that no valid easement was created.

[25] Mrs Robinson submitted that there are a number of possible explanations for why the Registrar did not proceed with the registration of the alleged easement. She suggested that the supporting documents may have been inadequate, that the Registrar may have required further time to consider the application, or that she may have regarded the endorsement on the servient title as sufficient. I do not accept any of those explanations. If the Registrar considered the supporting documentation to be deficient, the deficiency could have been remedied by the production of the necessary documents. That task did not rest exclusively with Mr Johnston. Any person claiming the benefit of the alleged easement could have pursued the matter. There is no evidence that any of the purported beneficiaries made any further enquiry of the Registrar or sought to ascertain the outcome of her consideration of the application.

[26] Further, it is generally the case that both the dominant and servient certificates of title reflect interests affecting the land, including whether a parcel benefits from or is burdened by an easement. In the absence of any evidence to the contrary, I do not accept that an endorsement on the servient title alone was intended to constitute a complete record of the alleged easement. Her submission that, where certificates of title are not initially produced for the registration of an easement, they may be produced at a later date to enable the Registrar to make the necessary endorsement is unpersuasive in the present case. Here, the relevant certificates of title were produced, yet the Registrar declined to make the requested notation. On the evidence before me, it does not appear that the Instrument of Transfer created a valid easement and as such the Defendants' defence on this issue must fail.

[27] In my opinion these are matters of law and the Defendants' evidence that Mr Johnston had previously acted for them and for himself in trying to get the easement endorsed on their respective titles, is irrelevant in these circumstances. The real issue is whether the Transfer Instrument created an easement. The resolution of that issue depends on the proper interpretation of the law, rather than on what the parties themselves believed or on what was intended.

Issue 4: Whether the Defendants trespassed on Lot 1

[28] As it relates to the events giving rise to the claim, Mr Johnston's evidence is that from February 2023 there were repeated acts of trespass, interference and damage to Lot 1. He says padlocks placed on the gate were repeatedly destroyed or removed, the 6th Defendant asserted control over access, persons gathered on the property, a person called "Butter" was found carrying out gardening work there without authority, the chain-link fence was destroyed, the water tank and plumbing were vandalized and furniture belonging to the Claimant was removed from storage and used on the property. He also says that the 5th Defendant was seen with a key to a padlock on the gate and was later captured on surveillance footage in December 2023, with others, destroying a high-

security lock from the gate. He says that these acts exceeded the easement claimed and constituted trespass.

[29] It is clear on the evidence of the Claimant and of the Defendants that the Defendants had entered on Lot 1 at various times. Locks were placed, cut off and replaced. The Defendants and/or their representatives were seen on video footage entering Lot 1. The 5th Defendant, who is not named as owner of any of the Lots, was the main instigator. The Defendants hosted a news conference with TVJ on Lot 1. All of these acts occurred without the permission of the Claimant. The issue of trespass is therefore also resolved in the Claimant's favour.

[30] Trespass to land is committed where a person directly enters land in the possession of another without lawful authority, justification, permission, or consent. Having found that the Defendants did not enjoy the easement alleged and that they entered the Claimant's property without its permission, the Court is satisfied that the Claimant has established the tort of trespass.

[31] Trespass to land is actionable *per se*. Accordingly, the Claimant is not required to prove actual financial loss, damage, or inconvenience in order to recover damages. However, the Claimant has indicated that the Defendants caused damage to the padlocks, gate, chain-link fence, and other items referred to in his evidence. It would have been of assistance to the Court if evidence of the cost of repairing or replacing the items had been adduced, given that the Claimant is seeking to recover those amounts. No such evidence was adduced, nor were any submissions made in that regard.

[32] The Court is not concerned with the effect of the trespass upon Mr Johnston personally, as he is not a party to these proceedings. The relevant consideration is the trespass committed against the Claimant's property. The Court recognises that the Claimant's proprietary rights were infringed and that those infringements occurred repeatedly over a number of years. In the circumstances, the Court considers it appropriate to award nominal damages in the Claimant's favour. In the case of **The**

Owners of the Steamship ‘Mediana’ v The Owners, Master and crew of the Lightship ‘Comet’ – ‘The Mediana’ [1900] AC 113 the Earl of Halsbury LC at page 116, said:

“‘Nominal Damages’ is a technical phrase which means that you have negative anything like real damage but you are affirming by your nominal damages that there is an infraction of a legal right, which, though it gives you no right to any real damages at all, yet gives you a right the verdict or judgment because your right has been infringed. But the term “nominal damages” does not mean small damages.”

[33] In determining the appropriate award of nominal damages in the case at bar, the Court was guided by the decision of Justice Lindo in **Nattal Smith v Newton Wright** [2020] JMSC Civ 100. In that case, nominal damages in the sum of \$150,000.00 were awarded for trespass to land. Adjusted to reflect inflation using the Consumer Price Index for May 2026 (149.7), that award is equivalent to \$216,329.48. Although the facts of that case are not identical to those before this Court, it provides useful guidance as to an appropriate level of compensation. The Court is satisfied that an award in the sum of \$300,000.00 is appropriate in the circumstances to recognise the infringement of the Claimant's proprietary rights arising from the Defendants' repeated trespass.

[34] In the circumstances my orders are as follows:

- a. The expression *“To the intent that same shall attach to and run with the land the subject of this Transfer the Transferor and the Transferee hereby reserve full and free right and liberty to the registered proprietors for the time being of any lands now or formally comprised in Certificate of Title registered at Volume 839 Folio 14 of the Register Book of Titles together with their respective servants and invitees at all times hereafter by day or night to enter upon and to pass and repass along over and upon the said land hereby transferred for the purpose of using the beach situate thereon, for*

swimming and bathing” as contained in paragraph 2 of Transfer Deed recorded as transfer number 471016 on the Certificate of Title for Lot 1 Market Beach registered at Volume 1066 Folio 170 (the “Property”) in the Register Book of Titles does not create a valid easement.

- b. The Registrar of Titles is to remove the caveats lodged by the 1st, 2nd, 3rd and 4th Defendants on the Property’s Certificate of Title within 28 days of the date on which this Order is served on her office.
- c. The Defendants whether by themselves, their servants and/or agents or otherwise are restrained from entering the Property and from removing or destroying any locks or any part of the perimeter fence around the Property.
- d. The Defendants are to pay the Claimant nominal damages in the amount of \$300,000 plus interest at 3% per annum from June 13, 2023 to July 9, 2026.
- e. The Defendants are to pay the Claimant costs in the claim which are to be taxed if not agreed.
- f. The Claimant’s attorney-at-law is to file and serve the Judgment.

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T. Mott Tulloch-Reid
Puisne Judge