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Sympathy for either family, the wisdom of the Pinchin family's 1964 investment, or the availability of alternative lake access points are not the issues.

[4] For the reasons below, I conclude that a valid easement was created in 1952. The Pinchin property benefits from an express easement over the Ikemoto property, or in the alternative from an easement of necessity or a prescriptive easement. The ancillary rights of parking and boat or canoe launch flow from that easement. The *Registry Act*, R.S.O. 1990, c. R.20 does not extinguish the easement on any of the three bases on which it is found: (1) s. 113 does not reach easements arising by operation of law; (2) the express easement is separately addressed through the presence in the servient chain of an express reservation of ingress/egress and the good-faith purchaser requirement; and (3) in any event, the necessity and prescription findings each independently survive s. 113 and are sufficient to sustain the declaration. A limitation defence was never pleaded but, regardless, is not a true limitation issue.

Background: The Properties and the Key Instruments

[5] The Pinchin property – approximately 40 per cent of Big Island in Lot 29, Concession 1 – is typical Precambrian Shield terrain: granite, rocks, trees, and no structures. No public boat launch serves Hungry Lake. Hungry Bay Road terminates at the east bank of Crooked Creek on the Ikemoto property. The bridge at the creek's southern end allows a small boat through only when water levels and beaver activity cooperate – an unreliable alternative at best.

[6] There are some other properties on Big Island which are accessed by reliance on deeded easements through the Ikemoto property, including use of a boat launch and parking area adjacent to Crooked Creek. However, without mainland parking and a boat launch, the Pinchin property is effectively inaccessible. Thoughts of subdividing the property and selling the lots are unrealistic: planning permission would require deeded mainland parking and boat-launch access for any development or subdivision, although the existence of an easement could achieve that.

[7] The Ikemoto property is the western end of what was Lot 27, Concession 1. Cody Ikemoto acquired it from his mother in 2009. His family operates Hungry Lake Lodge there – a fishing and cabin rental business built by years of effort and investment. He claims to have had no knowledge of the Pinchin family before this litigation.

[8] The title chain that matters runs through the following instruments:

- OLF4088 (13 July 1948): Martha Detlor conveyed to Mervin and Alfred Arney all parts of Lots 27 and 28, Concession 1 lying west of Crooked Creek. The plaintiff says a half-acre east of the creek was inadvertently omitted. Benjamin Detlor had previously sold all his Lot 27 and 28 land east of the creek except that half-acre back in 1925.
- OLF4211 (22 July 1950): Alfred acquired from Mervin "Parcel 2 – The East part of Lot Number Twenty-seven, in the First Concession," described as half an acre starting at the bridge centre. The plaintiff says this is the western portion of what is now the Ikemoto property; the defendant contests the "north-west shore" reference in the description.

- OLF4325 (22 July 1950): Alfred conveyed west-of-creek land to Mervin, reserving access to the creek for boat landing. The defendant relies on this to locate any boat-landing rights on the west bank.
- OLF4337 (20 August 1952): Alfred sold Big Island land to Alexander Morris and Leslie Marshall, providing that:
 1. The Grantee to have ingress and egress over Lot 27, Concession 1, in the Township of Olden, County of Frontenac Said Part Lot 27, Concession 1, in said Township is the property of the Grantor.
 2. The Grantee has the right to convey the above Provision No. 1 to any future successor or assign.

Registered January 1953. This is the primary instrument.

- FR85671 / OLF4374 / OLF4453 (1953–1955): Alfred sold what is now the Ikemoto property to the Marsh family in September 1953, took back a mortgage, and bought it back in April 1955. The plaintiff relies on this sequence to establish Alfred’s ownership before the 1952 easement grant.
- FR151428 (November 1964): Morris sold to Betty Pinchin (the plaintiff’s mother), describing the easement as a right “to travel over and to cross and re-cross Lot Number Twenty-seven (27) in the First Concession.”
- FR164914 (11 July 1966): Alfred sold to Leon Lapansee (including Parcel 3, east of Crooked Creek), reserving for three years ingress and egress and three parking spaces “along the easterly boundary.”
- Reference Plan 13R-4256 (1980): Survey plan depicting what is now the Ikemoto property parcels. Parts 4, 5, 6, 7, and 8 make up the western portion over which the plaintiff’s asserted easement runs.
- FR742367 (28 February 2005): Leon Lapansee sold to Gayle Ikemoto for \$240,000 “All that part of Lot 27, Concession 1 ... designated as PARTS 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 on Reference Plan 13R-4256, save and except PART 1 on Reference Plan 13R-16107, subject to, *inter alia* “rights-of-way in favour of all those entitled thereto over that part of said lot designated as PARTS 3, 4, 8, 10 and 11 on said Reference Plan 13R-4256”.
- FR779086 (2009): Transfer to Cody Ikemoto, also expressed subject to rights of way over Parts 3, 4, 8, 10, and 11, and a right to use Part 6 for boat launching and docking “for those entitled thereto.”

[9] Although the deeds related to what is now the Ikemoto property make no express reference to the easement claimed by Mr. Pinchin, each of the instruments referencing the easement

(OLF4337 in 1952, FR151428 in 1964, and FR241600 in 1972 when Betty Pinchin transferred the island property to herself, her husband and her two sons as tenants in common) were both entered in the property abstract for Lot 29, Concession 1 in which the Pinchin property was located as well as the property abstract for Lot 27, Concession 1 where the easement was located.

The Evidence

[10] Nine witnesses testified at trial. Including an agreed book of title documents and an agreed statement of facts, some 56 exhibits were filed at trial.

The Witnesses

[11] **Edwin Pinchin** is a retired geophysicist living in Alberta. His mother purchased the island property in 1964; the family always accessed it by parking at what is now the Ikemoto property and launching a boat. The family had either dragged tin boats to the water's edge or launched off a trailer. Alfred Arney himself had confirmed the access on the family's first visit in 1965. Mr. Pinchin estimated having made fifteen to twenty visits between 1965 and 2010, every two and a half to three years, with no challenge until around 2010. He was cross-examined extensively on family correspondence acknowledging the right of way as "vague," on efforts to purchase or lease parking from 2007 onwards, and on photographs the defence says show a boat on the west bank of the creek.

[12] **Lydia Luckevich** is Edwin's sister-in-law. She is the widow of Donald (Don) Pinchin, Edwin's brother, who died in 2015, and was originally a co-plaintiff. She made eight to ten visits between 1989 and 2012. She expressly recalled the final visit in 2012, when Victor Pinchin – Edwin and Donald's father, who was by then severely disabled and using two canes – had to be physically lifted into a rented boat by two men at the dock. Bill Ikemoto said it was he and a neighbour (Don Morgan) who helped. Ms. Luckevich recalled tension on that final visit about parking – something that she said had not previously been an issue. She initially described access as being "with permission" before clarifying she believed they had a right.

[13] **Graham Pinchin**, Donald's son, recalled two visits: one around 2003, parking in a gravel area, and the other in 2006, launching a canoe and camping overnight. He could not recall whether money changed hands.

[14] **Catherine Bryn Pinchin** recalled one visit in 1983. Her mother-in-law, Betty Pinchin, took a basket of apples to a woman at the Lodge while the men loaded the boat. She recalled parking on gravel.

[15] **Cody Ikemoto** is the registered owner. He had no knowledge of the Pinchin family before this litigation. He testified about post-2005 improvements: dock construction, shoreline cleanup, levelling and gravel for parking, and a gravel boat ramp on Part 5. He confirmed navigating a 14-foot aluminium boat under the bridge, though water levels and beaver activity sometimes made this difficult. He identified island property owners who do have deeded parking rights, and

described how Judith Lapensee (the wife of Leon Lapensee) had told the family on purchase not to let anyone park without deeded access.

[16] **Gayle Ikemoto** purchased the Lodge in 2005 after seeing it advertised online. She described it as derelict on purchase. She confirmed one interaction with Don Pinchin and his father, who rented a boat and mentioned they were looking for a parking spot; she says her husband, Bill, told them to have their lawyer draw something up. In cross-examination she conceded she had not been aware of Alfred Arney's 1966 reservation of parking and access rights when she purchased.

[17] **Bill (William) Ikemoto** confirmed helping Don Pinchin and his father into a boat and that Don mentioned looking for a parking spot. He denied any altercation. He had never heard of Alfred Arney before the litigation.

[18] **Judith Lapensee** married Leon Lapensee in 1970. He already owned the Lodge. She moved there in 1972 and lived there until 2005. Her only recollection of the Pinchin family was a single brief interaction in the early 1970s when Betty Pinchin arrived with a document purporting to show a right of way; Judith told her it was not over her land, and Betty left without argument. Ms. Lapensee had no knowledge of the Pinchin family accessing the property after that. She testified that the boat launch was built by her husband in the mid-to-late-1980s using gravel, cement, and cedar rollers; before that, boats were launched using cedar rollers between the boathouse and the Wigwam cottage.

[19] **Abigail McKinnon**, Planning Co-ordinator at the Township of Central Frontenac, confirmed that: (1) no public boat launch or parking serves Hungry Lake; (2) island properties require deeded mainland parking and boat-launch access for any development or subdivision; and (3) an easement would achieve this as effectively as a new lot.

Other Evidence

[20] Witnesses called by both parties were asked about emails, notes and other documents relating to the subject properties. Many of the documents involved correspondence between Don Pinchin and others, Don Pinchin having taken an active role – particularly between 2007 and 2010 – in discussions concerning the Pinchins' use of the Ikemoto property.

Issues

[21] Seven issues arise:

1. Did Gayle Ikemoto make a binding formal admission at discovery that the Ikemoto property is the servient tenement?
2. Does the Pinchin property benefit from an express easement created by OLF4337?
3. Does it benefit from an implied easement of necessity?

4. Does it benefit from a prescriptive easement?
5. What ancillary rights – parking, boat launch, docking – flow from any easement found?
6. Has any easement been lost – under the *Registry Act*, by non-registration, or by abandonment?
7. Can the defendant raise a limitation defence he never pleaded?

Issue 1: The Discovery Admission

[22] The plaintiff argues that Gayle Ikemoto’s answers at discovery constituted a formal and binding admission that the 1952 deed encumbered the Ikemoto property. At the relevant point in the examination, Ms. Ikemoto acknowledged there was “a deed for them to cross our land.” Plaintiff’s counsel then asked whether the defendant accepted the existence of a deed granting ingress and egress; Ms. Ikemoto said “Yeah” – whereupon defence counsel interjected: “Insofar as they are part of Lot 27.”

[23] I reject this characterisation. Formal admissions may arise from discovery answers, but only when those answers are clear and unequivocal: *Harrison v. Antonopoulos*, 2001 CanLII 62754 (ON SC), at para. 11. Here the exchange invited a lay witness to interpret the very legal document at the heart of the dispute. Even setting aside the tactic, the answer fell far short of unequivocal. Defence counsel’s immediate clarification makes plain that Ms. Ikemoto was addressing only what was in dispute – whether OLF4337 encumbered what is now the Ikemoto property at all, not conceding that it did.

[24] Furthermore, to the extent the answer might be treated as an informal admission, it carries no evidentiary weight given the context: *Curtis v. Medcan Health Management Inc.*, 2023 ONSC 7296, applying *Marchand (Litigation guardian of) v. Public General Hospital Society of Chatham* (2000), 51 O.R. (3d) 97 (C.A.), at para. 77.

Issue 2: Express Easement

[25] An easement requires: (a) a dominant and a servient tenement; (b) different owners; (c) a subject matter capable of forming the subject of a grant; and (d) accommodation of the dominant tenement (*Depew v. Wilkes* (2002), 60 O.R. (3d) 499 (C.A.), at paras. 18–19; *Barbour v. Bailey*, 2016 ONCA 98, at para. 56).

[26] Two sub-issues determine whether OLF4337 created a valid express easement: did Alfred Arney own the east-side land in August 1952, and if so, is the servient tenement sufficiently described?

Did Alfred Arney own land east of Crooked Creek in August 1952?

[27] He did – on the balance of probabilities. The inference is compelled by four overlapping considerations.

[28] First, the abstract for Lot 27 contains no competing deed that could explain Parcel 3 in FR164914 (the 1966 Lapansee transfer, from which the Ikemoto chain descends) other than OLF4211. The half-acre east of the creek had to come from somewhere. No deed places it anywhere else between 1925 and 1950.

[29] Second, Alfred Arney unquestionably sold that land to the Marsh family in September 1953. He could not have sold what he did not own. The sale to the Marshes, with the simultaneous taking back of a mortgage and the buy-back in April 1955, is wholly consistent with Arney having held the land continuously from the OLF4211 transfer.

[30] Third, the metes and bounds description in OLF4211 describes a parcel whose closing run – “north-westerly ... 175 feet to the place of commencement” – can geometrically close only if the parcel lies east of the creek. The only reasonable conclusion is that the “north-west shore” reference in the penultimate leg is a drafting error, not a description of a different parcel: *Gall v. Rogers* (1993), 15 O.R. (3d) 250 (Gen. Div.), 1993 CanLII 5446 (ON CTGD). Topography, natural boundaries, and the overall description all confirm this.

[31] Fourth, by 1950 Alfred had transferred all his west-side holdings to Mervin (OLF4325). OLF4211 must describe east-side land – there is no other land the deed could refer to.

[32] The dimensional discrepancies between OLF4211 (175/258 feet) and FR164914 (312/248 feet) do not displace this conclusion. Metes and bounds dimensions are evidence of boundaries, not conclusive definition of them, and 16 years of varying water levels and different surveyors explain the variation: *Gall*.

[33] The preponderance of the evidence points to Alfred Arney’s ownership, and the subsequent conveyance of the property conveyed to Leon Lapansee in 1966. While the plaintiff has the burden of proof of Alfred Arney’s title, the absence of any other coherent explanation is a consideration. The discrepancies raised by the defendant, even viewed cumulatively, are not sufficient to displace Arney’s title as the only logical conclusion.

Is the servient tenement sufficiently described?

[34] A valid easement has been created. The word “Part” in OLF4337 – interlineated, so possibly added after the rest of the deed was drafted – shows the drafter recognised that Arney did not own all of Lot 27. The identification of the specific Part was omitted. I would suspect inadvertently. To treat its omission as fatal would render the word “Part” redundant.

[35] Where an express grant is unclear, the court may examine the circumstances at the time of the grant to determine the parties’ intention as to the dominant tenement, the location and termini

of the right of way, and the nature and extent of the rights conveyed: *Laurie v. Winch*, [1953] 1 S.C.R. 49. *Jordan v. Beauchamp-Kiss*, 2018 ONSC 2677 confirms this approach and remains good law. *Fallon v. Wilson*, 2017 ONSC 5461, following Perell J.'s extra-judicial writing in "The Creation of Easements" (2005), 30 Adv. Q. 487, extends the *Laurie* logic to identification of the servient tenement.

[36] The defendant argues that the easement must be locatable from the instrument itself or at minimum from an identifiable registrable description. An easement over "Said Part Lot 27" without any further description is not registrable and therefore cannot take effect. Easements cannot exist "in gross"; the dominant tenement must be identifiable: *Carpenter v. Doull-MacDonald*, 2017 ONSC 7560, at para. 36.

[37] The plaintiff responds that the self-limiting "Said Part" language, read with *Laurie*, is sufficient. The servient tenement is identified by the circumstances at the time of the grant, not the four corners of the deed. A property identified from surrounding circumstances to a sufficient degree of certainty is not void for uncertainty.

[38] When Alfred Arney sold land on Big Island to Alexander Morris and Leslie Marshall in 1952, the parties would have known that it was imperative for the new owners to be able to access their property. That was surely the purpose of the easement. Alfred Arney could only grant an easement over land he owned. And, as I have explained, by 1952 I am satisfied that he owned what is now the Ikemoto property. To be sure, the purported easement could have been more felicitously worded. But the intent is clear. The grant of ingress and egress over Arney's land. It could surely be for no purpose other than enabling the purchasers of what is now the Pinchin property to access the land which Arney had sold them.

[39] In *Boone v. Brindley* (2003), 13 R.P.R. (4th) 181, 2003 CanLII 20920 (ON CA) – an ancillary rights case – the court, in considering whether the parking of vehicles along a right of way was an ancillary right granted with the right of way to some cottages, "properly considered those factors relevant to determining what is reasonably necessary to the enjoyment of the right of way, including a consideration of the language of the conveyance creating the easement, the purpose and circumstances surrounding the creation of the right of way, the history of its development and the circumstances of its use". Parking along the right of way had occurred both before and after the express grant of "a right of passage and re-passage over [the subject] roads". The trial judge said the parking of vehicles on the right of way granted by the settlors was "so obvious" that they "probably took it for granted and considered it unnecessary to be spelled out": *Lafferty v. Brindley*, 2001 CanLII 2578 (ON SC), per Donohue J. at para. 41. Alfred Arney may well have similarly felt it unnecessary to spell out how his purchasers would exercise their rights of ingress and egress.

[40] Examining the 1952 circumstances confirms the servient tenement. Alfred Arney sold island land that could only be reached by crossing his mainland holding. The sole practicable crossing point – by water access – was the east bank of Crooked Creek. The west bank was steep and marshy; multiple witnesses confirmed the difficulty of launching a boat from there or

navigating under the bridge. Aerial photographs reinforce this. No other interpretation of the grant makes commercial sense.

[41] An email from Don Pinchin in 2008 to consulting engineers engaged by the Pinchins acknowledging uncertainty about where the right of way was located – “We really do not know from the deed where our right of way is” – reflects a genuine puzzle about its precise extent, not an admission that no easement existed. The 1964 deed (FR151428) elaborating the right as “to travel over and to cross and re-cross” does not expand the original grant; it cannot, as Morris had no authority to do so under the *nemo dat* principle. The elaboration is consistent with what OLF4337 actually created.

[42] The defendant’s submission that OLF4337 created only a licence – a personal contractual permission rather than an interest in land – fails because the deed expressly provides that the “Grantee has the right to convey the above Provision No. 1 to any future successor or assign.” A licence does not run with the land. By granting a right that its holder could convey to successors, Alfred Arney created an interest in land, not a mere permission.

[43] A valid express easement was created in 1952.

Issue 3: Easement of Necessity

[44] If I am wrong on the express grant, an easement of necessity arises. When a vendor sells land inaccessible except over retained land, the law implies a grant: *McClatchie v. Rideau Lakes (Township)*, 2015 ONCA 233, at para. 48; *Toronto-Dominion Bank v. Wise*, 2016 ONCA 629.

[45] As Rouleau J.A. explained in *McClatchie*, at para. 48, easements of necessity are “presumed to have been granted when the land that is sold is inaccessible except by passing over adjoining land retained by the grantor. The concept arises from the premise that the easement is an implied grant allowing the purchaser to access the purchased lot”. The implication arises that the parties must have intended that some way of giving access to the land should have been granted: *Nickerson v. Barraclough*, [1981] Ch. 426, [1981] 2 All E.R. 699 (C.A. (Civ. Div.)), at p. 447 (Ch.)

[46] The test is strict necessity, not practical convenience.

[47] At the time of the 1952 grant, the Pinchins’ island property could only be reached by taking Hungry Bay Road across Arney’s mainland land and launching a boat from there. Every witness – including the Ikemotos’ own – confirmed that no public launch existed on Hungry Lake. The availability of Gold Russ Lodge as a private launch at some later date does not bear on necessity in 1952; the relevant moment is the date of the grant. Nor does the bridge passage defeat necessity: the ability of Cody Ikemoto to navigate a 14-foot aluminium boat under the bridge on occasion, subject to water levels and beaver activity, falls short of the reliable alternative water access that defeated necessity in *Toronto-Dominion Bank v. Wise*. Regular beaver dams – which Cody Ikemoto himself removes a couple of times a year – would fairly be inferred to have existed in 1952 as well.

[48] An easement of necessity can be implied in favour of the Pinchin property.

Issue 4: Prescriptive Easement

[49] If both the express grant and the implied necessity argument fail, a prescriptive easement runs in the plaintiff's favour through the doctrine of lost modern grant.

[50] The plaintiff must prove continuous, uninterrupted, open, and peaceful use without the permission of the servient tenement owner for at least twenty years: *Hunsinger v. Carter*, 2018 ONCA 656, at para. 9. For a vacant island accessed only by boat, the intensity of use warranted is lower than for a residential cottage; seasonal and intermittent use is consistent with the nature of the property: *Barbour*, at para. 83.

[51] The evidence establishes the following pattern of use from 1964 to 2012: Edwin Pinchin's fifteen to twenty visits over forty years; Graham Pinchin's visits in 2003 and 2006; Catherine Bryn Pinchin's 1983 visit; and Lydia Luckevich's eight to ten visits between 1989 and 2012. That pattern, judged against the nature of the property, satisfies the continuity requirement. The use was open: parking behind a building on a working lodge property is not clandestine.

[52] I do not accept Judith Lapensee's evidence of a single interrupting confrontation with Betty Pinchin in the early 1970s as reliable. It emerged for the first time at trial, despite extensive affidavit evidence in earlier proceedings. It is implausible that Betty Pinchin – described as proud and organised, arriving with her deed in hand – left without argument and was never heard from again, while the family simultaneously continued visiting for another thirty years. No documented visit gap follows the alleged confrontation.

[53] The "\$15 parking and launching" sign posted by the Lapensees does not interrupt the Pinchins' prescriptive claim. That sign targeted the general public parking and launching for a fee; the Pinchins parked without paying, asserting a right. The distinction matters: *1043 Bloor Inc. v. 1714104 Ontario Inc.*, 2013 ONCA 91, turned on a "private driveway" sign directed at the very use the plaintiff claimed. In the present case, the sign was directed at fee-paying customers, not at a party asserting an existing right.

[54] The post-2007 negotiations to purchase or lease parking do not undermine the prescriptive claim. Those negotiations arose after the Ikemotos resisted the Pinchins' assertion; they can be read as an attempt to resolve the dispute, not as an admission that no right existed. In a 3 May 2010 email, Don Pinchin addressed a comment to Gayle and Bill Ikemoto that "with everything else going on we may not see you this summer. If we do it will be for one day as usual" to which Gayle Ikemoto responded, "we looked over the e mail you sent, it seems to be fine. We'll talk to you later".

[55] The use was not permissive. Edwin Pinchin's evidence – uncontradicted – is that the family never paid to park and that access during the Lapensee years was "always on a friendly basis" without any question of permission being raised. Neighbourly coexistence does not equal permission: *Kubiniiec v. Dy*, 2025 ONCA 113, at para. 6. But here there is no evidence of the

Lapensees' accommodation being anything other than recognition of a right the Pinchins had always claimed.

[56] By no later than 1993, continuous, uninterrupted, open, and peaceful use without permission for twenty or more years had crystallised a prescriptive easement under the doctrine of lost modern grant. Unlike a statutory claim under s. 31 of the *Real Property Limitations Act*, R.S.O. 1990, c. L.15, the doctrine of lost modern grant does not require the twenty-year period to run immediately before commencement of the action: *Carpenter*, at para. 42. Once crystallised, the right survives; subsequent non-use (absent abandonment, which, while raised in the defendant's opening, was not pursued in the defendant's closing oral or written submissions) does not undo it.

[57] After the Ikemotos acquired the property in 2005, the Ikemotos did question the Pinchins' entitlement. But according to Edwin Pinchin's evidence – contradicted only by what I have found to be the unreliable evidence of Judith Lapansee about her encounter with Betty Pinchin – the owners of the Ikemoto property never objected to him or his family using their property to access the island property until July 2010.

[58] The 2010 conversion of these properties from the Registry System to the Land Titles System does not disturb a matured prescriptive easement. Lands converted under the *Land Titles Act*, R.S.O. 1990, c. L.5 remain subject to matured claims of prescriptive title or possessory rights acquired before conversion: *Carpenter*, at para. 54.

Issue 5: Ancillary Rights

[59] Ancillary rights flow only from what is reasonably necessary for the use and enjoyment of the easement, not from what is merely convenient: *Fallowfield v. Bourgault*, (2003), 68 O.R. (3d) 417 (C.A.), 2003 CanLII 4266 (ON CA), at para. 11; *Fisher v. Saade*, 2021 ONSC 1241, at para. 34.

[60] The easement grants ingress and egress to an island property accessible only by boat. The plaintiffs' evidence – which I accept – is that for decades, this right was exercised by parking at the Ikemoto property and launching a boat or canoe from the water's edge. While there is no suggestion that the Pinchins ever had use of a particular parking place, parking is clearly an ancillary right reasonably necessary to the enjoyment of the easement: *MacKenzie v. Matthews* (1999), 46 O.R. (3d) 21 (C.A.), 1999 CanLII 19931 (ON CA). Boat or canoe launch is equally necessary.

[61] Dock access presents a different question. Edwin Pinchin conceded that the family never used a dock — they dragged boats to the water's edge or launched off a trailer. A dock has never featured in the Pinchins' exercise of their rights. Granting dock rights may benefit the Pinchins' aspirations for future use of their property, but in the absence of evidence that they have enjoyed use of docks as part of the exercise of their easement, it would overburden the servient tenement to specify dock use as an ancillary right reasonably necessary for the use of the easement. Accordingly, I decline to expressly extend ancillary rights to dock access.

[62] I make no determination as to whether the easement could accommodate multiple vehicles or boats in connection with any future subdivision of the Pinchin property. While the prospect of purchasing or leasing multiple parking spaces and dock access to facilitate subdivision of the Pinchin property animated Don Pinchin's attempts to negotiate with the Ikemotos, the question of whether or not the easement granted by Alfred Arney, or arising by necessity or prescription, could effectively be divided if the dominant tenement is subdivided is not before me.

Issue 6: Non-Registration under the *Registry Act*

[63] The defendant argues that the plaintiff's easement expired under s. 113(1) of the *Registry Act*, because no notice of claim was registered within forty years of OLF4337's registration (28 January 1953). The forty-year period would have run out on 28 January 1993, and no notice was registered.

[64] I decline to uphold this argument for the reasons that follow.

[65] Before turning to each basis of the claim, I accept the defendant's submission that amendments of the *Registry Act* made in 2006 by the *Ministry of Government Services Consumer Protection and Service Modernization Act*, 2006, S.O. 2006, c. 34 retroactively eliminated the alternative preservation mechanism recognised in *1387881 Ontario Inc. v. Ramsay* (2005), 77 O.R. (3d) 366 (C.A.), 2005 CanLII 23211 (ON CA). The amended definition of "notice period" in s. 111(1) confines the triggering instrument to one that "first creates a claim," removing the pre-2006 language that permitted any subsequent instrument referencing the claim within the search period to refresh the notice period. Section 115(2) makes the amendments retroactive in plain terms. The Court of Appeal in *Gold v. Chronas* (2015), 128 O.R. (3d) 428 (C.A.), 2015 ONCA 900, at para. 62, specifically observed that the amended definitions "appear to be aimed at reversing the holding in *Ramsay*." Accordingly, the notice period for OLF4337 ran from its registration on 28 January 1953 and expired on 28 January 1993. No notice of claim was registered before that date. I do not rely on *Ramsay* as a basis for preserving the express easement under s. 113. The *Registry Act* argument must be addressed, and can be answered, on other grounds.

Easement of Necessity

[66] If I am correct in my conclusion that an easement of necessity can be established then, regardless of whether the *Registry Act* is a bar to preservation of an express easement, an easement of necessity would not be foreclosed. Section 113 applies to "claims set forth in, based upon or arising out of a registered instrument." An implied easement of necessity is not set forth in any instrument – it arises by operation of law from the circumstances of the grant. It therefore falls entirely outside the expiry regime of Part III of the *Registry Act*. As *Israel v. Leith* (1890), 20 O.R. 361 (C.A.), as quoted and followed in *Jacuniak v. Tamburro* (2002), 59 O.R. (3d) 236 (S.C.J.), 2002 CanLII 49467 (ON SC), at para. 27, confirms: an implied easement "is not within the *Registry Act*, and it will consequently prevail over the right of a subsequent registered purchaser without notice." Section 113 is simply inapplicable to the necessity basis of the Pinchin claim.

Express Easement

[67] The express easement presents a more challenging s. 113 question. Section 113(5)(a)(iv) exempts from the Part III expiry regime “an unregistered right of way, easement or other right that the person is openly enjoying and using”. The Court of Appeal in *Gold*, at para. 83, specifically identified this exception as the legislature’s intended safety valve for dominant tenement owners who continued to enjoy rights of way openly after the 2006 amendments eliminated the *Ramsay* mechanism. However, I would not invoke s. 113(5)(a)(iv) on this record. By the spring and summer of 2010 – months before the 25 October 2010 Land Titles conversion date – the Ikemotos were actively and explicitly opposing the Pinchins’ right to cross their land: Edwin Pinchin’s affidavit of 15 December 2020 records that the Ikemotos were “resisting giving us the normal access we had always used” and “denying we had a valid right to go through their lands.” The family’s visits in June and July 2010 were conducted on a boat-rental basis, not as an assertion of right. In those circumstances I cannot find, on the evidence, that the Pinchins were “openly enjoying and using” the easement as of right at or around the conversion date in the sense s. 113(5)(a)(iv) requires.

[68] The stronger answer for the express easement under s. 113 lies in the good-faith purchaser requirement in s. 113(1), considered separately for each of the two Ikemoto purchasers. Section 113(1) extinguishes an expired claim only as against a “purchaser in good faith for valuable consideration.” Whether Gayle or Cody qualifies is, on the evidence, genuinely in doubt.

[69] Gayle Ikemoto’s own conveyance – FR742367, the transfer from Leon Lapensee to Gayle in 2005 – expressly subjected the property to rights of way over Parts 3, 4, 8, 10, and 11 in favour of “all those entitled thereto,” and to a right to use Part 6 for boat launching and docking in favour of “all those entitled thereto.” Those phrases identify no one by name. A purchaser who takes title expressly subject to rights of way and boat-launching rights in favour of unidentified third parties receives with that instrument a clear signal to inquire who those parties are and what their rights consist of. Gayle Ikemoto conceded at trial that she knew that the Lapensees had deeded parking to people on the island. She therefore knew, at the time of purchase, that island owners held deeded rights over the servient land. The Pinchins are island owners. The failure to make any inquiry as to who “those entitled” were – in circumstances where the deed itself put her on notice of unidentified rights and her own knowledge confirmed that island owners held deeded rights over the land – is difficult to reconcile with a claim of good faith as against those very parties.

[70] FR164914 – the 1966 Arney-to-Lapensee transfer, which contains an express reservation of ingress, egress, and three parking spaces over Parcel 3 – reinforces the point: it appears in the servient chain and would have been encountered on any competent title search.

[71] Cody Ikemoto acquired title in 2009 in a non-arm’s length intra-family transfer at below market consideration (\$80,000), apparently without any independent title inquiry. He has acknowledged no knowledge of the Pinchin family before this litigation.

[72] Notably, the transaction files for the Ikemoto purchase and subsequent transfer to Cody were not produced. There is no evidence of what inquiries were (or were not) made. Ultimately, whether \$80,000 constitutes “valuable consideration” in the s. 113(1) sense, and whether the absence of independent inquiry defeats good faith in a transaction of this character, are questions which I do not need to resolve definitively, because it is unnecessary to do so. The necessity and prescription findings are each independently sufficient.

Prescriptive Easement

[73] The prescriptive easement crystallised by no later than 1993, twenty or more years of qualifying use having been completed by then. At the moment of crystallisation, the right vested as a matter of law under the doctrine of lost modern grant. Like an implied easement of necessity, a prescriptive easement does not arise from any registered instrument – it arises by operation of law. It is therefore not a “claim set forth in, based upon or arising out of a registered instrument” within s. 111(1), and Part III’s expiry regime does not reach it at all. The 2010 conversion did not disturb a matured pre-existing right: *Carpenter*, at para. 54.

[74] The good-faith purchaser question in relation to Cody Ikemoto’s 2009 acquisition is addressed above in the context of the express easement. As noted there, it need not be resolved given that the necessity and prescription findings are each independently sufficient.

Issue 7: Limitation Defence

[75] The plaintiff objects that the defendant never pleaded a limitation defence. As a general rule, an unpleaded limitation defence is not before the court: *Strong v. Paquet Estate* (2000), 50 O.R. (3d) 70 (C.A.), 2000 CanLII 16831 (ON CA).

[76] In any event, the defendant appears to rely on s. 31 of the *Real Property Limitations Act*. Section 31 is not a limitation provision in the orthodox sense. Prescription and limitation are distinct: with prescription, time creates a right; with limitation, it extinguishes a remedy: Ontario Law Reform Commission, *Report on Limitation of Actions* (Toronto: Department of the Attorney General, 1969), at 141.

[77] The defendant’s failure to plead s. 31 is therefore not a failure to plead a limitation defence within the rule in *Strong*. The issue does not arise.

Decision

[78] The Pinchin property benefits from an easement for ingress and egress over the Ikemoto property. That easement arises from the express grant in OLF4337 (20 August 1952). In the alternative, it arises by necessity or by prescription under the doctrine of lost modern grant.

[79] The ancillary rights of parking and launching a boat or canoe are reasonably necessary for the enjoyment of the easement and flow from it. Dock access as such is not an express ancillary right established on the evidence.

[80] The Land Registry records for both the Ikemoto and Pinchin properties shall be amended to give effect to this decision.

[81] If counsel cannot agree on the form and content of the judgment, they may arrange an appointment through my judicial assistant to settle its terms.

Costs

[82] Both sides brought significant care, expertise, and expense to this case. I am grateful to counsel. Had Alfred Arney described the easement with greater precision – and had OLF4211 not contained what appears to have been a typographical error – this dispute would likely never have arisen. Neither side can be criticised for asserting what were, on any fair reading of the records, reasonable positions.

[83] I would encourage counsel to reach agreement on the issue of costs. Should they be unable to do so, upon request from either party I will provide a timetable for costs submissions.

Mew J.

Date: 30 June 2026

CITATION: Pinchin v. Ikemoto, 2026 ONSC 3786
COURT FILE NO.: CV-20-106 (Kingston)
DATE: 20260630

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

EDWIN PINCHIN and LYDIA LUCKEVICH
Plaintiffs

– and –

CODY WILLIAM ROBINSON IKEMOTO
Defendant

REASONS FOR DECISION

Mew J.

Released: 30 June 2026