

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO.s G 189/2016, G 45/2017 & G 77/2017

**IN THE MATTER OF BRADLEY CARPENTER ET AL v. CAYMANIAN STATUS AND
PERMANENT RESIDENCY BOARD & THE CHIEF IMMIGRATION OFFICER OF
THE CAYMAN ISLANDS**

**AND IN THE MATTER OF MARK EDMUNDS v. CAYMANIAN STATUS AND
PERMANENT RESIDENCY BOARD & THE CHIEF IMMIGRATION OFFICER OF
THE CAYMAN ISLANDS**

**AND IN THE MATTER OF DEREK LARNER v. CAYMANIAN STATUS AND
PERMANENT RESIDENCY BOARD & THE CHIEF IMMIGRATION OFFICER OF
THE CAYMAN ISLANDS**

Appearances: Mr. Alastair David of HSM Chambers for the Applicants
Ms. Dawn Lewis and Ms. Lisa Donalds of the Attorney General's Chambers
for the Respondent

Before: Hon. Justice Richard Williams

Heard: 12 May 2017

Date of Ruling: 12 May 2017



EX TEMPORE RULING

Introduction

1. Leave to apply for judicial review was granted to Bradley Carpenter by Mangatal J. on 9 November 2016 and his Notice of Originating Motion was filed on 10 October 2017. Leave to apply for judicial review was granted to Mark Edmunds by Hall J. on 10 February 2017 and his Notice of Originating Motion was filed on 15 February 2017. At the outset of today's hearing, unopposed leave to apply for judicial review was granted,

unopposed, to Derek Lerner. All three applications relate to delays in the permanent residence (“PR”) system as set out in the Immigration Law.

2. By Notice of Appointment dated 9 May 2017, the Applicants seek to consolidate the three judicial review matters Cause No.s G 77/2017, G 189/16 and G 244/16 to be heard simultaneously.
3. The application is supported by affidavits sworn on 2 March 2017 and 8 May 2017 by Majdi Beji who is employed by HSM Chambers.
4. The Respondents consent to the application to consolidate. The parties have agreed directions which had been submitted for my approval. Although the parties are in agreement, an order for consolidation requires a Judge to exercise his discretion and for this reason I give this brief Ex Tempore Ruling.



The Applicants’ reasons for applying for consolidation

5. The Applicants offer the following reasons why the application to consolidate ought to be allowed:
 - (i) There are common questions of law and fact which arise in all three applications. **The questions of fact** are contended to be whether all three of the Permanent Residence Applications were delayed because of the Ritch Report. A further question of fact is whether the Chief Justice’s Judgment in the case of *Hutchinson Green and Racz* would have prevented the applications from being considered.

The common questions of law relate to the interpretation of the Constitution of the Cayman Islands (“the Constitution”) and the European Convention of Human Rights (“ECHR”) in respect to the actions of the Respondents. The three Applicants allege that Articles 9 and 19 of the Constitution have been breached and that Article 8 of the ECHR has been breached. When considering whether there have been any breaches of these Articles the Applicants contend that the Court will have to consider the same thing in each case, namely:

- How long should someone wait for an application to be considered before the failure to act becomes unreasonable?
- The legal test in respect to what reasonably justifiable means as set out in Article 9(3) of the Constitution.
- Whether the waiting for legal advice can constitute a reasonable justification.
- The interplay between the ECHR and the standard principles of reasonableness in respect of judicial review proceedings.
- What the appropriate test is in Caymanian law for what constitutes a breach of Article 8 of the ECHR including consideration about whether British case law should be followed or whether there should be a new test which is specific to this jurisdiction.
- The type and nature of damages arising out of a breach of Article 9 and Article 19 of the Constitution if the Applicants are successful.

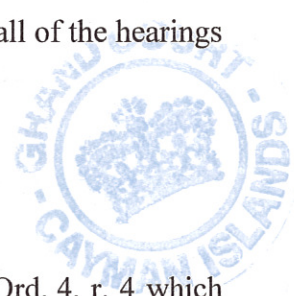
It is also contended that legal issues arise in relation to whether the Respondents acted irrationally and have imposed an unlawful moratorium on the consideration of PR applications.

- (ii) Another reason given is that the damages claims arise out of the same transactions or series of transactions.

6. The Applicants submit that if the Court does not accept the above as reasons why the matters should be heard together to submitted that they should still be heard simultaneously because:

- (i) it will save costs and court time;

- (ii) all three applications are linked on the basis they relate to the running of the PR system and it would be preferable if a single judge heard all the matters; and
- (iii) Cause No. G 189/2016 has, by directions given on 17 February 2017, already been timetabled to trial and if the other matters are consolidated all of the hearings may be heard sooner.



The Law

7. The relevant rule with regard to consolidation is to be found in GCR Ord. 4, r. 4 which reads as follows:

“4.(1) Where two or more causes or matters are pending in the same Division of the Court and it appears to the Court that –

- (a) some common question of law or fact arises in both or all of them; or*
- (b) the rights or relief claimed are in respect of or arise out of the same transaction or series of transactions; or*
- (c) for some other reason it is desirable to make an order under this Rule, the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.*

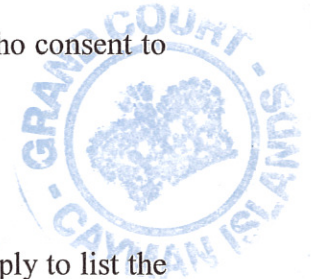
(2) When the Court makes an order under paragraph (1) that two or more causes or matters are to be tried at the same time but no order is made for those causes or matters to be consolidated, then, a party to one of those causes or matters may be treated as if he were a party to any other of those causes or matters for the purpose of making an order for costs against him or in his favour.

(3)”

8. Having regard to *Daws v Daily Sketch & Sunday Graphic Ltd & Anor* [1960] 1 WLR 126; [1960] 1 All ER 397, I have ensured that all the parties affected by any consolidation have been heard. I note that all three matters are in the Civil Division of the Grand Court. The three Applicants who apply to consolidate their matters are different individuals, but the Respondents are the same. The fact that there are different Applicants does not mean that an application for consolidation should not be entertained. However, when considering this application I recognise that in such circumstances greater care ought to be exercised to see if they have different views. This concern is alleviated because the application to consolidate is one made by the different Applicants. All of the Applicants have the same legal representation, as do the Respondents. This is important because if the effect of the order for consolidation is the joinder of a number of parties as Applicants, then they must act by one attorney in accordance with the general rule noted in *Lewis v Daily Telegraph Ltd (no2)* [1964] 2 QB 601 that plaintiffs must always be represented by the same solicitor.
9. It is clear that the main rationale underlying the consolidation of proceedings under GCR O.4 is to ensure an efficient hearing of related actions under a common “umbrella.” As highlighted in *Payne v British Time Recorder Co & WW Curtis* [1921] 2 KB 16, *Horwood v British Statesman Publishing Co Ltd* [1929] WN 38 and *Daws v Daily Sketch* the main purpose of consolidation is to save costs and time and to avoid to duplicity as well as for reasons of convenience in the handling of the hearing of several actions which are linked by one of the common threads provided in the rules. Consolidation will not usually be ordered unless there is “*some common question of law*”

or fact bearing sufficient importance in proportion to the rest” of the subject matter of the actions “*to render desirable that the whole should be disposed of at the same time.*”

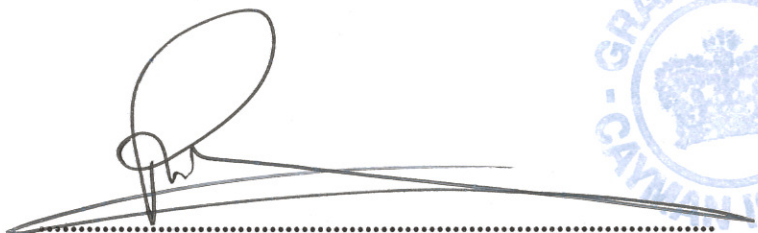
10. As I have already stated, the power to order consolidation is discretionary and it will not be exercised if a party can show a real possibility of prejudice (see *Payne v British Time Recorder Co*). No claim of prejudice has been raised by the Respondents who consent to the order for consolidation being made today.
11. In the case before me it is agreed that the discretion should be exercised simply to list the three proceedings to be heard together and that the relevant evidence in one is to be evidence in the other. If this is right then the parties and the pleadings remain as they were subject to any subsequent amendments, but there will be only one hearing in the Civil Division of the Grand Court.
12. Having regard to the above principles and the submissions made by the Applicants I am satisfied that I should approve the consent order submitted by the parties and exercise my discretion in such a way that the Cause No.s G 77/2017, G 189/16 and G 244/16 be consolidated to be heard simultaneously.
13. I have reviewed with the parties the draft consent order. Subject to the minor alterations to the dates for disclosure and for the filing of affidavits, I approve the directions contained therein. I mentioned to the parties that the case may come before any Judge save for McMillan J. and that they may want to consider increasing the time estimate for



the final hearing from 4 to 5 days. I will approve the perfected order administratively when it is submitted for my review.

Costs

14. The Respondents do not oppose the Applicants' application for them to pay the Applicants' costs to be taxed on the standard basis if not agreed. Accordingly, I make that order by consent.

A handwritten signature in black ink, consisting of a large loop at the top and a long horizontal stroke below it, ending in a small hook.

The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT