

IN THE GRAND COURT OF THE CAYMAN ISLANDS

12-08-08

CAUSE NO. 491 of 2006

IN THE MATTER OF THE ROADS LAW (2005 REVISION)

AND IN THE MATTER OF THE LAND ACQUISITION LAW

AND IN THE MATTER OF A COMPENSATION CLAIM BY CONCEPT LTD
FOR BLOCK 12C PARCEL 195

BETWEEN:

CONCEPT LIMITED

Applicant/Appellant

- and -

CAYMAN ISLANDS GOVERNMENT
ACTING BY THE DIRECTOR OF LANDS AND SURVEY

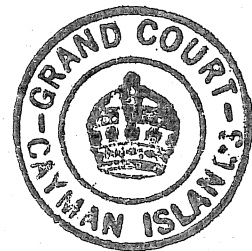
Respondent

Appearances: Mr. Ramon D. Alberga QC and Mrs. Linda DaCosta
of Conyers Dill & Pearman instructed by
Mr. Michael Alberga of Myers & Alberga for the
Applicant/Appellant

Miss Vicki Ann Ellis and Miss Odia S. Reid of the
Government Legal Department for the Respondent

Before: Hon. Justice Levers

Heard: 3 July 2008



JUDGMENT

This matter comes before me by way of a Summons dated 5th May 2008. The following Orders are sought by Concept Limited, the Applicant/Appellant in this matter:

- (1) That the Applicant/Appellant be granted leave to adduce further evidence of the report of BCQS prepared by Liam Day.
- (2) Subject to paragraph (1) herein, that the Appellant/Applicant be granted leave to amend the Memorandum of Grounds of Appeal filed herein in the form of the draft exhibited to the Second Affidavit of Mitzi Callan.
- (3) Such other relief as this Honourable Court may deem just and necessary.

BACKGROUND

1. The Appellant is the owner and landlord of property which consists of 1.2 acres, which property has a commercial two-storey building comprised of four shop units on the ground floor and one unit on the upper floor. Approximately 35,000 sq. ft. of this property is undeveloped, partly elevated and filled, and, it is alleged, has the potential for future development.

2. Pursuant to Section 4 of the Roads Law, by a Notice published in The Gazette dated 5 May 2005, the Cayman Islands Government declared its intention to construct a road on 0.25 acres of property and therefore acquired 0.25 acres of the property for this purpose. By Notice of Intention to Claim Compensation dated 25 July 2005, the Appellant sought compensation for the Government's acquisition of the property. Hearings took place on 13 July, 18 August and 1 September 2006 and a ruling was given whereby the Government was ordered to pay CI\$178,612.40 or CI\$16.40 per sq. ft.
3. A Notice of Appeal was filed by the Appellant and the Respondent argued that it was out of time. However, on 21 March 2007, Honourable Justice Henderson gave leave to appeal out of time and made several other orders. One of those orders is for leave to file fresh evidence and has a direct impact on this application.
4. The request for either party to adduce further evidence is to be made within thirty days from the settling of the Record. The Summons dated 5 May 2008 comes about as a result of the parties being unable to agree on the settled record. Therefore the record is not settled. In the interim, however, this application has been made.

THE APPLICATION

The Application is to adduce further expert evidence from a Mr. Day. The hearing of the matter has been undertaken with the assistance of two experts. The Applicant supports the application by an Affidavit of Mitzi Callan. Annexed thereto is the expert's evidence. I take the Respondent's point that the expert's evidence is not in the exact procedural form that should be used when submitting expert evidence to the Court, but I believe it is more important at this stage to look at the contents therein. The Respondent also submits that the contents of the Report are likely to fuel further debate and defeat the principle that there must be an end to litigation since it is capable of perpetuating further arguments as to which report is correct.

The basis on which the Appellant is wishing to adduce the Report is that her property is being taken by the Government of the Cayman Islands under the law and the compensation that she is to receive was wrongly computed. It is accepted, I believe, by the Respondent that the matters raised in the upcoming Appeal raise questions of public importance and general principles to be decided for the first time. Furthermore, during the course of the hearing of the application, it was submitted that the Learned Judge accepted this. Indeed, the Appeal by the Respondent granting leave from Henderson J's Order was based on the fact that he took this as a criterion for giving leave to appeal out of time when it should not have been. I have read Mr. Day's report and, in view of the following factors, I believe it is an application that must be given serious consideration:

- (a) The Appeal will be by way of a re-hearing (Grand Court Rule, Order 55, Rule 2) and will involve an exercise of original jurisdiction as well as appellate jurisdiction.
- (b) It cannot be seriously submitted that, whilst there is an appeal, to allow this further evidence would be perpetuating opposing arguments and going against the principle of there being an end to litigation,
- (c) The procedural requirement - in other words, the format that should be used in Mr. Day's Report – cannot be the basis of this Court deciding on whether to allow this evidence or not.
- (d) Order 59 Rule 10 of the Rules of the Supreme Court allows this Court to allow fresh evidence on special grounds. I believe the question of public importance and the fact that this is a matter that is going to be retried *de novo* does constitute special grounds.
- (e) This matter goes to the fundamental issue in dispute and the Court must have all the assistance it can. This matter that is at issue is outside the reasonable experience of the judge. Usually issues such as this, being of such a technical nature, may require a great deal of information to help a legal mind. The expert's

primary duty is to the Court, not to the party paying the fees, and, therefore, in all the circumstances of this case, it will be helpful independent evidence. I allow the application and would give the Applicant fourteen days from the date of the delivery of this final Judgment to file Amended Grounds of Appeal.

Costs of this Application to the Applicant.

Dated this 12th day of August, 2008



Levers J.
Judge of the Grand Court

