

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
IN THE MATTER OF A JUDICIAL REVIEW

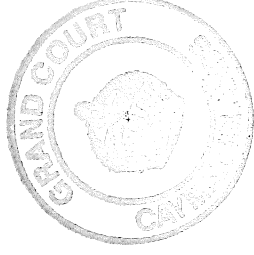
CAUSE NO. 793 OF 1998

BETWEEN CAROL CECILE SCHROCK APPLICANT  
AND LIQUOR LICENSING BOARD RESPONDENT

**BEFORE DOUGLAS, J.  
IN CHAMBERS**

APPEARANCES

Mr Neil Tims Applicant  
Ms. Jackie Wilson for Respondent  
Mr. James Chapman for G. Burns Ruddy



REASON FOR DECISION

The substantive order sought is one of Certiorari in which the Court was to be moved to quash the decision of the Liquor Licensing Board, (the Board) dated 24th. September 1998, by which the Board refused to transfer the hotel category liquor license for the Sleep Inn Hotel from the name of G. Burns Ruddy into the name of the Applicant Carol Cecile Schrock. Instead of this writ of certiorari, The parties agreed that the Court hear an application by Mr. Ruddy to be joined as Second Defendant to these proceedings in lieu of the writ.

The chronology of events leading up to this application are as follows:

On 11th. February 1999 Graham J. granted the Ms. Shrock, leave to apply for judicial review. His Order provided that the proceedings be served also upon Mr. G. Burns Ruddy. Since that date the attorneys for Ms Shrock have served all papers in the proceedings upon Mr. Ruddy, and kept Mr. Ruddy's attorneys informed of any developments.

On 4th. March 1999 Mr. Ruddy filed an Acknowledgement of Service in the proceedings. He however, did not tick the box indicating whether he intended to contest or otherwise participate in the proceedings. Indeed, on neither occasion when this matter was listed, firstly on 3rd. May 1999, the return date, nor at the directions hearing which took place on 28th. May 1999, did Mr. Ruddy make any application to be joined as a party to the proceedings, notwithstanding the fact that it is obvious from his attorney's affidavit that both he and Mr. Ruddy were proceeding on the basis that the review application would have been heard of the earlier date. I must here mention

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that at the directions hearing the Court gave directions as to the hearing of affidavit evidence, and directed that such evidence should also be served on Mr. Ruty.

On 21st. June 1999 the Government Legal Department, obviously acting upon the Court's directions, served a copy of the Board's affidavit upon Mr. Ruty's attorney. In the governing letter the attorney was asked whether Mr. Ruty intended to apply to be joined as a party to the proceedings, and the following day the Applicant's attorney was informed that Mr. Ruty did intend to apply.

The application for joinder of Mr. Ruty as Second Defendant was issued on 22nd. July 1999, and Mr. Ruty swore an affidavit in support of that application. It was subsequently agreed between the parties that Mr. Ruty's joinder application would be heard at the beginning of the substantive judicial review application set for today the 15th. September 1999. However, on 9th. September 1999 the Applicant and the Respondent reached an agreement that the judicial review application would be withdrawn on the basis that there would be no order as to costs. It is now the contention of the Applicant that this application is merely an effort to recover Mr. Ruty's costs, and that in considering the application for joinder in this action the Court will have to determine whether Mr. Ruty is entitled to costs.

Several grounds have been forwarded in support of this application, but it is obvious to me that the main thrust of Mr. Ruty's case is amply reflected in the first three submissions made by his attorney. For the sake of clarity I now propose to list them.

The first issue raised is that Mr. Ruty as the holder of the license and the party that successfully opposed the application to transfer the license should have been joined as the Second Defendant from the outset as the party most closely affected by the application and a party to the transfer application ("the other party to the dispute")

The second issue concerns the transfer application before the Board, which, it is contended, was not significantly different from any other court proceedings and the principle that any other party to a court proceeding should be joined as a Respondent in Judicial Review proceedings.

The third and final of these submissions was put forward as an alternative one. It is contended that the Order 53 rule 5(2) is analogous to giving notice to potentially interested parties in a trust action to give them an opportunity to file an Acknowledgement of Service. That procedure was followed in these proceedings when an Acknowledgement of Service was served on Mr. Ruty for him to return if he wished to take part. In the event that such a party does return the Acknowledgement of Service he is automatically joined as a party. The Acknowledgement of Service was filed on 4th. March 1999.

Judicial review is a sui generis category in which GCR Order 53 sets out the rules as to who may be heard. In addition to the principle defendant, namely the decision-maker whose decision is being challenged by way of judicial review, under GCR Order 53 other interested parties are permitted to participate in judicial review proceedings. These interested parties essentially fall into two categories.

GCR Order 53 rule 9(1) provides that a person who desires to be heard in opposition to the motion, and appears to the Court to be a proper person to be heard, shall be heard. Such a person will not, however, be a full party to the proceedings. GCR Order 53 rule 5(2) provided that the proceedings shall be served upon the defendant and “all other persons directly affected.” The Court can direct service on any others who are interested. It is then up to that person to determine whether or not to take part in the proceedings (De Smith, “Judicial Review of Administrative Action”, 5th. Ed. para 15-028).

The House of Lords considered the application of a person to be joined as a second defendant to judicial review proceedings on the basis that he was a “person directly affected.” in the case of *R. v Liverpool CC ex parte Muldoon* (1996) 1 WLR 1551. Lord Keith of Kindel stated (at 1105F)

*“That a person is directly affected by something connotes that he is affected without the intervention of any intermediate agency.”*

There is some assistance by analogy in the provisions of GCR Order 15 Rule 6(2). This provides:

*“Subject to the provision of this rule, at any stage in the proceedings in any cause or matter the court may on such terms as it thinks fit just either of its own motion or on application:*

- (b) Order any of the following persons to be added as a part, namely:*
  - (1) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon: or*
  - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or-matter which in the opinion of the Court it would be just or convenient to determine as between him and that party as well as between the parties to the matter.”*

Even if this Order is relevant the first limb of the rule envisages the joinder of parties who are directly affected by judgement in the proceedings. The Court must consider it just and convenient to consider as between Respondent and Applicant i.e. if the Board decided not to oppose Respondent should be allowed to. The leading authority is the decision of the English Court of Appeal in *Gurtner v Circuit* (1968) 2 QB 587. Lord Denning MR stated at p595 D-E:

*“ When two parties are in dispute in an action in law, and the determination of that dispute will directly affect a third person in his legal rights*

*or in his pocket, in that he will be bound to foot the bill, then the Court in its discretion may allow him to be added as a party on such terms as it thinks fit."*

Diplock LJ said at p 603A

*"A matter in dispute is not...effectively and completely 'adjudicated' unless all those who are liable to satisfy the judgement are given an opportunity to be heard."*

As regards the second limb of GCR Order 15 Rule 16(2) (b) as we have seen the authorities lay down the following guidance as to factors which the Court may take into account when determining whether to make an order joining a person as a party.

- (a) *".....the rule requires some interest in the would-be intervener which is in some way directly related to the subject-matter of the action. A mere commercial interest in its outcome, divorced from the subject-matter is not enough. (Per Kerr LJ in Sanders Lead Co. v Entores Metal Brokers Ltd. (1984) 1 WLR 452, CA at 460E)*

The only subject-matter in this case is whether proper procedure and approach was followed by the Board.

- (b) There need not exist a cause of action between the would-be interceder and one of the parties. (TSB Private Bank International SA v Chabra 1 WLR 231, ChD)
- (c) There must be a present issue between the would-be intervener and one of the parties.: Spelling Goldberg Publications v BPC Publishing Ltd. (1981)RPC 208 per Lord Bridge at 281 *"...Clearly what is contemplated is that at the time when an order for joinder is made under this provision, the question or issue arises out of, or relating to, or connected with the relief or remedy claimed in the cause already arises between the party seeking to be joined or one or other of the existing parties to the litigation."*

I shall now examine the reasons given by Mr. Ruttly why he is of the belief that he should be joined as a Second Defendant, which is in the proper legal terminology, a Second Respondent. As we have seen above, one of the main grounds advanced by Mr. Ruttly is that he is the party most closely affected by the application, and is "the other party" to the dispute. Although there does appear to be a personal dispute between Mr. Ruttly and the Applicant, the only issue before the Court is whether the proper procedure and approach was followed by the Board. Furthermore, the writ before the Court is not one of mandamus whereby the Court is asked to decide whether the Board should be ordered to take away the license from Mr. Ruttly and grant it to the Applicant. Were this the case Mr. Ruttly would indeed have an issue connected with the remedy claimed in this judicial review between himself and the Applicant. He is grossly mistaken in his assertion (supra) that "the transfer application

before the Board was not significantly different from any other court proceedings and the principle that any other party to Court proceedings should be joined as a Respondent to Judicial Review proceedings should apply.” Here Mr. Rutty has confused the Application by Ms. Shrock to the Board for a transfer of the license into her name with the application to the Court for a Judicial Review. In the former Mr. Rutty would have to be a person directly affected by any judgement made. The situation here is quite different. We are dealing here with a writ of Certiorari. In these proceedings the Applicant seeks an order to quash the decision of the Board to refuse to transfer the Sleep Inn Hotel liquor license into her name from Mr. Rutty’s. If Ms Shrock succeeds in her application, the Board will not be required to determine the Ms. Shrock’s application again. The decision of the Court could have no effect on Mr. Rutty, he would remain licensee of Sleep Inn. He will only be affected if the Board, upon reconsidering Ms. Shrock’s application, decides in her favour. consequently Mr. Rutty is not directly affected by the judgement in the judicial review proceedings as defined in *ex p Muldoon*, or in *Gurtner v Circuit*. (both supra) Mr. Rutty is only affected if, following the quashing of its decision the Board subsequently decides to transfer the liquor license into Ms. Shrock’s name. As such, an intermediate agency has necessarily intervened. Neither are Mr. Rutty’s legal right affected, nor will he be liable to satisfy the judgement.

Moreover, whether Mr. Rutty’s rights are affected by a decision in favour of Ms Shrock depends upon how the Board reconsiders her application. Therefore there is no present issue between Mr. Rutty and the Board, merely a contingent one. I find that throughout these proceedings Mr. Rutty has been in no higher category than that of an ‘interested party,’ who is not directly affected. As such he was entitled to be served with the documents as was ordered by the Court..

I am constrained to mention one final issue. The attorney for Ms Shrock has questioned. Mr. Rutty’s motive for now seeking to be joined as a party to this judicial review in light of events in the proceedings. It is submitted that although leave to seek judicial review was granted in February, yet it was not until July, some five months later, that Mr. Rutty made his application to be joined as a party, despite having been fully aware of the issues in the proceedings from the outset. It is contended that his chief motive is to place himself in a position whereby he can seek to recover costs from the applicant.

There seems to be some merit to this contentuion. As we have already seen, both the Applicant and the Respondent have jointly agreed to discontinue the proceedings with no order as to costs. This application by Mr. Rutty to be joined, even after being fully apprised of the parties’ agreement, indicates to this court that it has been made for the sole purpose of obtaining costs from the applicant. This is confirmed by his attorney’s assertion that , I quote, “ Mr. Rutty is entitled to be joined to ensure that he has a say in the conduct of the proceedings and is consulted so his interests are protected: to avoid for example, attempts to adjourn or terminate the proceedings without reference to him.” It is difficult to see what other detriment could accrue to Mr. Rutty by the termination of the proceedings other than an inability to obtain costs.

All the factors stated above weigh heavily against any prospect of Mr. Ruddy succeeding in his application to be joined as a "Second Defendant" in the judicial review. I therefore dismissed this application and granted the parties to the judicial review leave to discontinue the proceedings with no order as to costs.

Costs of today to Respondent.



Kipling Douglas

Judge of the Grand Court(Actg.)

27 September 1999.

