

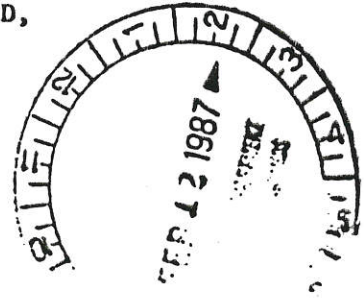
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IN THE GRAND COURT OF THE CAYMAN ISLANDS (Civil)
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

BEFORE THE HON. CHIEF JUSTICE, SIR JOHN SUMMERFIELD,
C.B.E., Q.C., J.P.

ON 3rd September 1986

CAUSE NO. 215 of 1986



IN THE MATTER OF

	EDWARD JAMES ATTRIDGE	APPLICANT
AND	THE CAYMANIAN PROTECTION BOARD)	
	and)	
	THE ATTORNEY GENERAL)	RESPONDENTS

Mr. N. Hill Q.C. instructed by Mr. David Ritch of Ritch & Conolly
for the applicant
Mr. R. Ground for the respondent.

JUDGMENT

The applicant is qualified for the grant of Caymanian Status
and applied for a grant on or about 15 December 1981.

On or about 14th December 1982 the Governor in Council determined,
under the heading "GRANT OF CAYMANIAN STATUS", inter alia:

".....

- (b) the Board should be invited by the Chief Secretary to consider which of the remaining applicants on the original list (believed to be just over 120) were ineligible, under the present directives, for the grant of status
- (c) the Chief Secretary should consult Hon T M Bodden and Hon J M Bodden once that point had been considered by the Board
- (d) the Board should be authorised to refuse the applications of those agreed, as a result of such consultation, to be ineligible for the grant of status
- (e) the balance of those on the original list should be informed

" that their applications would be re-considered in about a year's time, when the 1983 quota was dealt with

(f) an annual quota system should be reintroduced with effect from 1983 onwards, the quota for that year being 25

.....".

A copy of that minute was sent to the Caymanian Protection Board.

These "decisions", by way of advice accepted by the Governor, would appear to be intended as policy directions under section 69(3) of the Caymanian Protection Law (Revised) which was then in force and continued in force until replaced by the Caymanian Protection Law 1984 which came into force on 27 March 1985.

Section 69 (3) then in force read:

"The Governor may from time to time issue policy directions to the Board and to the Chief Immigration Officer for their guidance in the exercise of their respective powers, duties and functions under this Law and it shall be the duty of the Board and the Chief Immigration Officer to put into effect and to carry out such directions."

That provision is repeated in the corresponding section of the 1984 Law, namely, section 71.

Certain points can, perhaps, usefully be made about that provision to clear the air.

It gives a power to the Governor in Council to issue policy directions for the guidance of the Board in the exercise of its powers etc. It does not empower the Governor in Council to usurp the statutory powers of the Board in any particular case. The directions must be of a general nature e.g. that the Board should refuse the grant of Caymanian status to any person who cannot demonstrate his ability to support himself and his family at an acceptable level. It does not entitle the Governor in Council to direct that the grant of status should be denied to A, B and C, being named persons. That is for the Board to decide within the ambit

of the law and any general directions applicable.

Secondly, the directions are not law. They are directions for guidance. The grant or denial of any right within the framework of the law does not cease to have legal effect because it conflicts with any direction but is otherwise in conformity with the law. The Governor in Council may have a remedy by changing the composition of the Board that fails to comply with directions. There may be a remedy by way of prerogative writ. But the mere failure to comply with a direction would not of itself render a decision or act of the Board a nullity if it otherwise accords with the power accorded to the Board by law.

Finally, this provision does not give the Governor in Council power to revoke a decision already taken by the Board within the ambit of the law or to vary it retrospectively. I am not, of course, here talking about the powers of the Governor in Council on an appeal where there is clearly power to reverse or alter the decision of the Board. That is not what happened here. I am confining myself to the effect of section 69 (3) in relation to the purported policy directions (as advanced in argument) adverted to above.

These observations on section 69(3) are not intended to be exhaustive. They are the ones that readily come to mind in relation to the facts of this case.

Two further principles should perhaps be noted.

The general rule that a power to do a certain act implicitly carries with it the power to revoke the action taken does not apply where the contrary intention is manifest. In relation to the grant of Caymanian status the power to grant that status does not include the power to revoke it except in the circumstances clearly provided by law. Those circumstances were set out in sections 21 and 22 of the Revised Law. Somewhat different

provisions apply in the 1984 Law. In the context of this case that means that, once Caymanian status has been granted, it can only be revoked in the circumstances set out in the law.

Finally, only the person or authority in whom a statutory power is vested may exercise it. That is, of course, self evident. In the context of this case it means that it is the Board, and only the Board, that has power to grant Caymanian status - section 18 of the Revised Law and section 18 of the 1984 Law. (Again, I am not here concerned with the power of the Governor in Council on appeal. That is of no consequence on the facts of this case).

With those observations, the narrative can continue.

The Applicant's application for Caymanian status was duly considered by the Board and in the Board's confidential minutes of 2nd (?) November 1983 the following (here edited) minute appears:

" APPLICATIONS FOR THE GRANT OF CAYMANIAN STATUS

At the request of the Chief Secretary, the Board considered the 265 applications with a view of granting 25, being the annual quota approved by Executive Council.

Of this list, the following were recommended:-

.....

23. Edward J. Atteridge (the applicant)

..... (24 names in all)."

There were also some observations not relevant to this case.

Although the minute refers to a recommendation it is clear that the names listed were the Board's selection for the grant of Caymanian status and it is unnecessary to examine critically the language used. The Respondent very fairly did not seek to make any point or rely on the looseness of the language used in the minute. No doubt that was the standard minute in

these matters. One could take issue with other aspects. But there can be no doubt that the Board was here exercising its powers under section 18 (3) of the Revised Law, however expressed. The Secretary to the Board had no doubts about the matter and, in a letter to the Chief Secretary dated 16 November 1983, stated on behalf of the Board:

" Re: Grant of Caymanian Status

The Caymanian Protection Board has recently considered applications for the grant of Caymanian Status based on Executive Council's direction by way of a copy of Council's minutes dated 20 December, 1982.

Of the two hundred and sixty five (265) applications before the Board, the following twenty-four (24) were approved by the Caymanian Protection Board.

.....

7. Edward J. Attridge (the applicant)

.....".

There were further observations concerning a request for the release of "spaces on the quota" which do not affect this case.

At that stage, then, it is clear that the Board had exercised its power to grant Caymanian status to the applicant pursuant to section 18 (3) of the Revised Law in unequivocal language.

That decision was never formally communicated to the Applicant although he became aware of it through the grape vine.

The reason for the failure to communicate the decision to the Applicant is not fully before the Court. The Respondent has, however, fairly put before the Court a minute of Executive Council dated 26 January 1984 in the following terms.

" EXTRACT

FROM MINUTES OF THE EXECUTIVE
COUNCIL OF THE CAYMAN ISLANDS

To: Chief Secretary
Copied to: Secretary Caymanian Protection Board

The following extract from Minutes of Executive Council item number 2766 of Meeting number 145/84 held on 17th January, 1984 is forwarded to you for

" Action
Information

DATE: 26th January, 1984

J.Manderson
Clerk of the Executive
Council

2766. EXN. 58/84 GRANT OF CAYMANIAN STATUS

Council advised that the 1983 quota for the grant of Caymanian status should be withdrawn and that a quota for 1984 should be considered after the enactment of the new Caymanian Protection Law.

2. The Governor ordered accordingly."

That minute is ambiguous in that it is open to the construction -

- (a) That the quota has been withdrawn in the sense that there was no longer any constricting quota and that the number who could be granted Caymanian status was at large without restriction;
- (b) that the withdrawal of the quota meant that there could be no grants made at all - that the quota was nil.

An indication of what was meant appears in paragraph 3 of the affidavit of Kerry Nixon which reads:

"3. The records of the Board also show that, of the 24 people listed in KN2, 12 have subsequently been granted Caymanian Status, eleven on various occasions in 1985, and one in 1986. The remaining 12 have not. The latter group includes the Applicant, Mr. Attridge."

In other words, the meaning was as suggested in (b) above. It would appear that the minute was treated as having cancelled the grants of Caymanian status made during 1983 although it does not say so in so many words.

Bearing in mind the principles set out earlier, it will be apparent that it was not within the power of the Executive Council to cancel any grant of Caymanian status in the manner in which it purported to do so or at all. Further, it would be wrong in principle to purport to issue a direction with retrospective effect. The Executive Council was not the authority either to make the grant in the circumstances or to revoke any grant made by the Board, directly or indirectly.

In the premises, it is unnecessary to consider the subsequent applications and the decisions thereon. The original decision stands. The subsequent action or inaction thereon had no legal effect on the action already taken i.e. the grant of Caymanian status.

I hope it will not be thought discourteous, if I do not deal with the argument advanced on incomplete gifts. I have felt it unnecessary to do so in the light of the decision I have reached. I do not think that the doctrine advanced has application in relation to statutory functions governed by a specific enactment. I will merely say that, in my view, the grant of status took effect when it was made by the Board, albeit expressed in imperfect terms in the minutes. The communication of that decision to the Applicant was a matter of administrative machinery which, for whatever reason there was a failure to implement, does not affect the actual grant itself.

In the premises there must be a declaration in terms of paragraph (3) of the application, namely that the applicant was granted Caymanian status and is entitled to a Certificate of Caymanian Status by virtue of the decision of the Caymanian Protection Board of the 2nd November 1983 pursuant to Section 18 of the Caymanian Protection Law.

The applicant is to have costs.



Sir John Summerfield.

11th February, 1987.