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IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN ON THE 15TH DAY OF MARCH 1982  
BEFORE THE HONOURABLE SIR JOHN SUMMERFIELD C.B.E., Q.C.

CAUSE NO. 406 OF 1981

BETWEEN : HAVEN HOLDINGS LTD. : PLAINTIFF  
AND : HER MAJESTY THE QUEEN IN RIGHT OF : DEFENDANT  
THE CAYMAN ISLANDS  
AS REPRESENTED BY THE ATTORNEY GENERAL  
OF THE CAYMAN ISLANDS

Mr. Adams for plaintiff  
Mr. Martin for defendant

JUDGMENT

On the 16th January 1980 the plaintiff applied to the Central Planning Authority for full planning permission for its proposed development of condominium apartments to be known as Havenwood. Accompanying the application was the appropriate fee of \$6,840.00.

Over the course of a year there were written and verbal exchanges between the representatives of the plaintiff and the Authority with a view to achieving modifications of the plan submitted before approval could be given.

On the 16th January 1981 the plaintiff withdrew its application and applied for a refund of the fee of \$6,840 paid. This was refused.

This action is a claim by the plaintiff for that sum, as moneys had and received, together with interest at 7½ per annum from 16th January 1981.

In my view, these are the only facts relevant to the claim.

It seems to me that the question turns on the interpretation of the Development and Planning Regulations 1977 and, in particular, regulation 31 which provides:

"31. An application fee is payable to the Authority and must accompany the application for planning permission in accordance with the Schedule. Fees are not refundable, irrespective of the Authority's decision, but additional fees will not be charged for re-submission of amended plans required by the Authority."

However, the legal jousting has also proceeded on lines of attack and defence much more widely drawn, with evidence to match. These battle lines can be summed up in terms of paragraph 6 of the statement of claim which reads:

"6. The Plaintiff states that the consideration for the said payment has failed in that the Authority has refused or neglected to make a decision within a reasonable time and that the Defendant has thereby been unjustly enriched and that it is inequitable that the Defendant should retain the money in the face of its neglect or refusal to make the decision required of it."

These allegations are countered in the defence.

Let me say quite shortly that, despite the authorities cited, in my opinion no contractual or quasi contractual relationship arose; failure or neglect to make a decision within a reasonable time is immaterial; no doctrine of unjust enrichment applies; and the facts do not raise any grounds for equitable relief.

I take the view that the reasons for the delay by the Authority in making a decision on the application and the reasons for the withdrawal of the application are immaterial. If the delay had been for improper reasons the plaintiff could have forced the issue by way of writ of mandamus.

If I am wrong in my view as set out above, then, I should make my findings of fact for the benefit of a higher court which may become seized of the case. I am happy to say that I found all three witnesses who gave evidence in this case to be truthful ones doing their best to assist the court within the limits of their recollection. I accept their evidence unreservedly. I can see no conflict between the

evidence for the plaintiff and that for the defendant.

On that evidence it would appear that the obstacle to the preparation of a fresh plan for submission to the Authority for approval, as requested by the Authority, was the inability of the Authority to advise on the location of a proposed main road which would cut through the plaintiff's property. That was a matter outside the competence or control of the authority. There was nothing unreasonable about the conduct of the Authority. There appeared to be no urgency on the part of the plaintiff and the plaintiff did not, through his representatives or otherwise, claim to be in difficulties because of the unavoidable delay. It was for the most part <sup>a</sup>boom period when architects and the Authority were extremely busy. Delays were inevitable. Although the letter of 16th January 1981 withdrawing the application claimed that the delay was the reason for the withdrawal, Mr. Joseph said in evidence that he thought that the reason was that the plaintiff had "missed the boat" on account of inability to develop the land; the boom had passed.

However, that is all by the way. I think the case could have been conducted on the admissions on the pleadings and that the relevant material for determining the issue is set out in the first five paragraphs of this judgment.

The fees payable on applications for planning permission are set out in the Development and Planning Regulations. They are obviously designed to compensate the Government, in whole or part, for expenses incurred in processing applications. In this case the Authority and members of the Planning Department did a great deal of work in processing the application. It was through no fault of the Authority that the application was withdrawn.

As the payment of the fee is governed by the Regulations so

must any refund. There is no provision for a refund in any circumstances. Regulation 31 makes it clear that the fee must accompany the application and that is the end of the matter. It goes on to provide that the fee is not refundable "irrespective of the Authority's decision". In my view that includes the case where there has as yet been no decision. I am of the opinion that the Regulations clearly contemplate that there will be no refund of application's fees in any circumstances.

Accordingly, I dismiss the claim with costs.



SIR JOHN SUMMERFIELD

26th April 1982.