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

CAUSE NO. 611 OF 2007

BETWEEN:

THE CENTRAL PLANNING AUTHORITY

Appellant

AND:

THE MIRAGE DEVELOPMENT LTD.
(OPERATING AS SNUG HARBOUR VILLAS)

Respondent

Appearances: Ms. Joan Mattis of the Government Legal Dept. for Crown, the Appellant

Mr. Ward Sykes of Appleby for the Respondent

Before: Hon. Justice Henderson

Heard: August 14, 2009

GRAND COURT - CAYMAN ISLANDS

RULING

1. This appeal by the Central Planning Authority ("CPA") from a decision of the Planning Appeals Tribunal ("PAT") raises a question of jurisdiction which is fundamental.

2. Under section 13(1) of the *Development and Planning Law* (2005 Revision) (the "*Law*"), Mirage Development Ltd. ("Mirage") applied to the CPA for planning permission to develop 20 apartments on a piece of land in Snug Harbour. In its decision of November 16, 2006, the CPA refused that application.

3. By notice of appeal dated December 6, 2006, Mirage filed an appeal before the PAT arguing that the decision should be set aside on the ground that the CPA had erred in law, acted unreasonably and breached the principles of natural justice. By its decision dated November 5, 2007, the PAT allowed the appeal and set aside the decision of the CPA. The appeal from the PAT was initiated in this Court on the grounds that the decision was wrong in law and unreasonable.

4. The appellate jurisdiction of the PAT was -- at the time the notice of appeal to it was filed and at the time the appeal was heard – governed by section 48 of the *Law* which reads in its material parts:

> "(1) Any person who –
>
> (a) has applied for permission to develop land …
>
> … and who is aggrieved by a decision of the authority may, within fourteen days after receipt of notification of such decision … appeal by way of rehearing to the Tribunal against such decision.
>
> "(2) On any such appeal, the Tribunal may confirm, reverse or modify any decision of the Authority and make such order (including any order for costs) as it thinks just."

5. The legislation was not always in that form. Until 2003, the appellate jurisdiction of the PAT was set out this way in section 51(1) of the *Law*:

> "51(1) Any person aggrieved by a decision of the Authority may … appeal by way of rehearing to the Tribunal against such decision on the ground that –
>
> (a) it is erroneous in law;
>
> (b) it is unreasonable;

(c) it is contrary to the principles of natural justice; or

(d) it is at variance with a development plan having effect in relation thereto, but not otherwise."

6. The change in wording in the legislation governing appellate jurisdiction indicates a change in the legislative intent. Clearly, all appeals subsequent to the amendment must be by way of rehearing. Since that amendment, no other method of appeal is, or has been, permissible.

7. A rehearing does not require, or even permit, any consideration of whether the evidence adduced and arguments presented at the original hearing justified the decision under appeal. Errors of law and procedure at the original hearing become unimportant. At a rehearing each party can, and should, present the evidence upon which it relies. Fresh evidence may be adduced. The parties are not limited to the evidence they adduced originally. The PAT must come to its own conclusion on the merits, unfettered by the views of the CPA. A rehearing is intended to be a fresh look at the evidence and at the arguments by the appellate tribunal, not a debate about whether the CPA was right or wrong.

8. I turn to the decision of the PAT.

9. Under the heading "Grounds of Appeal" the PAT said this:

> "In essence the ground of appeal was that in so far as the CPA had taken into account the non-expert evidence of the objectors as to the likely impact as to traffic, noise and pollution as a social impact [,] it had improperly considered irrelevant evidence and information and that it had improperly rejected information and evidence from the NRA

in respect of likely traffic impact and failed to provide sufficient reasons for doing so.

Accordingly, the CPA had:

(a) erred in law;

(b) acted unreasonably; and,

(c) breached the rules of natural justice."

10. By framing its ground of appeal in that way, Mirage led the PAT into error. All of the focus was placed upon the correctness or otherwise of the decision of the CPA.

11. Under the heading "Reasoning", the PAT said this:

> "Under section 48(1) of the Law, an appeal to the PAT now proceeds by way of rehearing. The PAT no longer exercises a merely supervisory jurisdiction (akin to judicial review on statutory grounds) but is now entitled to conduct a rehearing at large. The PAT has previously ruled that the following principles will guide its determination of the appeal:
>
> > 1. The PAT will not disturb findings of fact or the exercise of a discretion by the CPA unless the appellant demonstrates that the decision of the CPA was one which no reasonable planning authority could reasonably and rationally arrive at; and
> >
> > 2. The PAT will not substitute its own decision for that of the CPA unless it is satisfied that the decision of the CPA was perverse or unlawful.
> >
> > The appeal raises important issues concerning what if any weight the CPA should attach to the non-expert evidence of objectors as opposed to the expert evidence of the National Roads Authority ..."

12. Later on, the PAT made this finding:

> "The CPA was entitled to reach the conclusion that it did on the evidence, including the evidence of objectors, before it."

13. Still later, the PAT asked the question:

> "Did the CPA improperly take into account the evidence of the objectors as to the volume of traffic that would be generated?"

14. In answering that question, the PAT (referring to a quote from a decision of this Court) said:

> "In light of that ruling, the PAT rules that the mere fact that the CPA preferred the opinions of the objectors, or gave greater weight to them, does not of itself make its decision unreasonable."

15. These extracts from the decision demonstrate that the PAT misunderstood the scope of its mandate. In essence, it approached its task as if the legislation was still in the form it bore prior to the recent amendments. The PAT's error is entirely understandable because the notice and grounds of appeal and the arguments of both counsel before it proceeded on the same erroneous assumption.

16. The PAT has misconceived its jurisdiction granted by the legislation and has proceeded on a false premise. The Appellant before me acquiesced in that and contributed to the error. However, because the error goes to the root of the PAT's jurisdiction, the decision cannot stand. Jurisdiction cannot be conferred by consent.

17. For these reasons, the appeal is allowed.

18. I am satisfied that each party should be left to bear its own costs, as the erroneous path followed by the PAT was entirely acquiesced in by the parties.

Dated this 14th day of August, 2009

Henderson, J.

Henderson, J.
Judge of the Grand Court