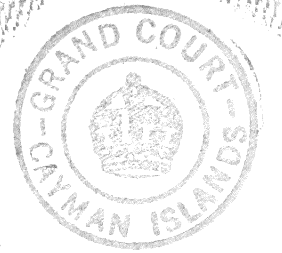
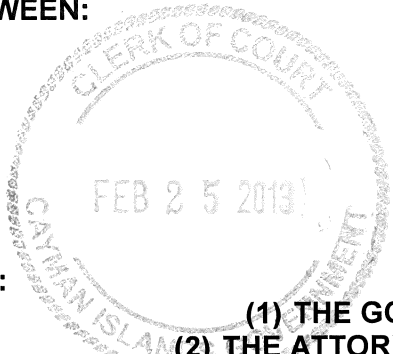


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 62 OF 2013

BETWEEN:

- (1) ALICE MAE COE
- (2) ANNIE MULTON
- (3) EZMIE SMITH
- (4) BETTY EBANKS



Plaintiffs

AND:

- (1) THE GOVERNOR OF THE CAYMAN ISLANDS
- (2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS
- (3) MINISTER FOR FINANCE, DISTRICT ADMINISTRATION, WORKS, LANDS & AGRICULTURE
- (4) NATIONAL ROADS AUTHORITY (NRA)

Defendants

=====
 WRIT OF SUMMONS
 =====

TO: The Governor, Attorney General, Minister for Works, and NRA c/o Legal Department, George Town, Grand Cayman;

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within (14 Days) after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with the action and Judgment may be entered against you forthwith without further notice.

Issued this 25 February 2013

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The First Defendant, the Governor of the Cayman Islands, holds all Crown lands in the Cayman Islands in trust for Her Majesty under the Governor (Vesting of Lands) Law (2005 Revision) ("Crown Lands Law"), and has the power to dispose of such Crown land under the Crown Lands Law, and under Section 38 of the Cayman Islands Constitution Order 2009 (the "Constitution"). The First Defendant is also bound by Part II of the Constitution Section 31 (2) to exercise his or her functions in accordance with the Constitution and any other law. The following claim will refer to the Governor as the First Defendant except when referencing statute whereupon the terms Governor and Governor in Cabinet will be used as distinguished in the specific statute referred to.
2. The Second Defendant under Section 56 of the Constitution is the principal legal advisor to the Government of the Cayman Islands, responsible for and defending the integrity of all legislation, as well as responding to declaratory relief with respect to legislation including with respect to its constitutionality and is required to be named as a defendant in any action for declaratory relief.
3. The Third Defendant, is the Minister responsible for Finance, District Administration, Works, Lands & Agriculture and under the National Roads Authority Law (2006 Revision), is the Minister responsible for Roads, and for the provision of directives and policy to the Fourth Defendant. The Third Defendant for the purposes of these proceedings is a 'public official' under Section 19 of the Constitution, as well as a member of the Cayman Islands Cabinet and a member of the legislature.
4. The Fourth Defendant was at all material times a body corporate answerable to the Third Defendant on matters of policy and the recipient of directives from the Third Defendant, and is established under Section 3 of the National Roads Authority Law (2005 Revision), (the "Roads Authority Law"). The Fourth Defendant is also a 'public official' under Section 19 of the Constitution.
5. The Plaintiffs are all Caymanians by birth and reside in the Cayman Islands

The Plaintiffs bring these proceedings unless otherwise stated under Part 1, Section 26. of the Constitution, Enforcement of Rights & Freedoms ...*Any person may apply to the Grand Court to claim that government has breached or*

threatened his or her rights and freedoms under the Bill of Rights and the Grand Court shall determine such an application fairly and within a reasonable time.

Introduction and overview

6. According to an agreement dated 15 December 2011 (the "Agreement"), between the Government of the Cayman Islands represented by the Cabinet Secretary, ("Cabinet"), the National Roads Authority (Fourth Defendant) and Dart Realty (Cayman) Ltd, a private developer ("DRCL"), Government has committed itself to allowing 4,290 feet of public road owned by the Crown, ("the Road"), to be transferred ('closed and disposed') (the "Disposition") to DRCL for the purpose of expanding its beach front land in the area already owned by DRCL.
7. DRCL expects the Road Disposition to significantly increase its beach property in the area which in turn will enhance the marketability of, and value of, a new proposed hotel also owned by DRCL.
8. Although the Agreement is said to be a component of a larger partnership entered into by DRCL and Government to spur economic growth and create jobs, the Agreement is also said to be a 'standalone' agreement meaning that it does not require other aspects of the partnership with government to take place, before it is activated by the parties.

The Agreement

9. The Road in question is a stretch of the West Bay Road of some several hundred feet running from the intersection between West Bay Road and Yacht Drive through to the intersection between the now relocated Governor's Way and West Bay Road, one of the more scenic uninterrupted stretches of beach front road left in the Cayman Islands, and perhaps the last piece of the internationally famous Seven Mile Beach (other than the public beach), encompassing several pedestrian and vehicular access points to the beach and sea, with a spectacular view of the beach, north and south.
10. The Plaintiffs themselves by way of utilising the only road from West Bay to George Town and beyond, have travelled the Road for over 50 years and it is common knowledge that the West Bay Road has been used as a right of passage for the people of West Bay and other residents and visitors, to access other parts of the Island, and of course *vice versa* for access to West Bay and its

seven mile beach for over 100 years starting with horses and donkeys in the 19th century without interruption, to the present day vehicular right of passage.

11. The Plaintiffs are also concerned that an alternative and 'second' road to the present West Bay Road was always intended and desirable in the event of a natural disaster in West Bay such as a major hurricane or some other catastrophe which would close a single road for indefinite periods, and that therefore closing one road and opening up another is illogical and dangerous and does not make economic sense for the people of the Cayman Islands. The Plaintiffs believe that under the Agreement to close the Road, the people of the Cayman Islands stand to lose culturally, environmentally and economically especially since there is no dire need for DRCL to close and absorb the road, as there are other alternatives available to the developer.
12. The Plaintiffs bring these proceedings on the basis that the Agreement and the way it is being implemented is unconstitutional for a number of reasons, and point to the fact that the Legislature, and by inference the citizens of the Cayman Islands, has never been fully informed of the Agreement to close the Road and to have it absorbed into DRCL beach land.
13. In return for the 4,290 feet comprising the Road, the Agreement calls for DRCL to construct an extension to the Esterly Tibbets Highway (ETH Extension) which would run approximately parallel to the Road but much further to the East away from the famous seven mile beach area, and to provide immediately on signing of the Agreement, the sum of US\$5,000,000.00 for Government to utilise on Government programs.
14. There is no estimate of the cost of the ETH Extension provided in the Agreement, but a DRCL press release quotes a likely cost to DRCL of around US\$35,000,000 for completion of the extension. It is also public knowledge that the ETH Extension will also open up other development properties owned by DRCL in the West Bay area of the Island and along the ETH Extension itself.
15. There are also investment and development incentives provided under the Agreement for a variety of DRCL projects in the Cayman Islands to the value of US\$24,000,000 in the Agreement itself, and a substantial share of tourism taxes associated with DRCL to be kept by DRCL ventures for periods of 10 years and more.

16. Estimates of the value of the closure of the Road and its disposition into DRCL beach property again have not been determined in the Agreement but some sources opine that an independent valuation would exceed CI\$500,000,000 because of the high development value placed on seven mile beach land.
17. Construction of the ETH Extension commenced in September of 2011 the Agreement calling for Phase 1 of the Agreement, (the ETH Extension) to commence within 30 days of the signing of the Agreement, despite the fact that certain amendments were sought by Cabinet, the third of which apparently has now recently been agreed on i.e. the apparent provision of a new 'second public beach, and other Government ventures throughout the Island.
18. At clause 127, the Agreement calls for an 'independent review' (the "Review") of the terms and objectives of the Agreement during a review 'period' by a qualified entity appointed by Government and approved by DRCL. The purpose of the Review at 127 1.1... *shall be to ensure governments compliance with its Framework for Fiscal Responsibility*; and 127.1. 2. ... *to provide government with adequate information to assess the value of the Agreement to the Cayman Islands...*, and provides a list of references produced by DRCL, as to how the Review should assess Government's Framework for Fiscal Responsibility, and the entities general terms of reference.
19. The Plaintiffs aver that the Governor himself when Cabinet signed the Agreement stated that the Agreement must abide by the terms of the so called Framework for Fiscal Responsibility as promoted by the UK Government.
20. At 127.3.2 of the Agreement, one of the terms of reference for the Review is *Government receiving value for money*.
21. In the event that Government or DRCL were not satisfied with the written Report of the observations and conclusions of the entity which carried out the independent Review and or not satisfied that the terms of reference for the Review have been carried out, either entity were entitled to terminate the Agreement in writing.
22. At 128 of the Agreement, ... *Upon receipt thereof, Government shall be entitled to consider the written report of the observations and conclusions of the entity which has carried out the independent review and, if it deems it appropriate, propose new and/or revised terms to this Agreement up to the expiry of the Review period which shall be subject to agreement by DCRL, failing which Government shall be entitled at any time during the Review Period to terminate this Agreement, unless agreed otherwise.*

23. The report (the "Report"), emanating from the Review was initially to be finalised within 3 weeks of the date of the Agreement, but this was continuously extended for reasons the public is not aware of. The Plaintiffs understand that the 'Report' by Price Waterhouse Coopers was handed to Cabinet and DRCL on 14 February 2013.
24. To date only Cabinet has seen the Report, but according to a recent press briefing by a Cabinet Minister (not the Third Defendant responsible for roads and for submitting policy decisions to the Fourth Defendant) the Minister claims the Report shows good value for money for the Government, and that there is now no barrier to the closing of the Road which the Minister states is estimated to take place sometime before the end of February 2013.
25. To date the Plaintiffs claim, the Third Defendant has not informed the Legislature or explained to the general public of which the Plaintiffs are members, exactly how value for money has been arrived at under the Agreement in terms that the general public can understand, perhaps because there has been no independent valuation of the Road to be disposed to DRCL, and the whole Agreement has been shrouded in secrecy.
26. According to a press briefing on 14 February 2013, Cabinet has decided to allow the first portion of the Road to be closed, but is determined not to release the Report to the public or the Legislature until the first stretch of road closure has taken place, a *fait accompli*.
27. The Plaintiffs claim that neither themselves nor the general public, either through the media or through its Legislative members, have had a chance to review the independent Report, and that the Agreement was never published for public scrutiny and review, and was only brought into the public arena by a member of the Legislature who was anonymously given a copy in confidence and secrecy.
28. The Plaintiffs claim that the lack of transparency surrounding the Agreement is unconstitutional and point to the Schedule of the Constitution which *inter alia* calls for a country with open, responsible and accountable government that includes a working partnership with the private sector and continuing beneficial ties with the United Kingdom.
29. There are a number of other legal anomalies associated with the Agreement including the actual or intended 'disposition' of the Road by the First Defendant and or Governor in Cabinet under the Governor (Vesting of Lands) Law (2005 Revision), ("Crown Lands Law"), i.e. under Section 9 of the Crown Lands Law

and then by way of the so called 'waiver' under Section 10 (3) of the Crown Lands Law, (see paragraph 37 through 49 below). The Plaintiffs claim that the disposition of the Road to DRCL whenever it takes place must be considered a procedural impropriety and as such *ultra vires* and void.

30. The Plaintiffs also claim that the Fourth Defendant being a party to the Agreement has illegally fettered its discretionary aspects of the Agreement particularly in light of its interaction with the Third Defendant on policy and directives, and has acted illegally under the Agreement with respect to recommending the closure of the Road to the First Defendant and or Governor in Cabinet and its disposition to DRCL.
31. The Plaintiffs therefore claim that the lack of transparency throughout is unconstitutional and under Section 19 of the Constitution, the First Defendant and or Governor in Cabinet, and the Third and Fourth Defendants, have not acted lawfully, and therefore unconstitutionally, have acted irrationally, and have proceeded unfairly.
32. Irrationally for the purposes of these proceedings is defined as *...so unreasonable that no public body or public official could have come to the decision...*
33. Clause 149 of the Agreement states *inter alia* that... *the Parties accept and agree that nothing contained in this Agreement shall in any way fetter, or is to be deemed as attempting to fetter, the exercise of legislative power of the Legislature of the Cayman Islands (as defined in the Cayman Islands Constitution Order 2009).*
34. The Plaintiffs claim that the Legislature has never been given a copy of the Agreement for review with their constituents.
35. At 189.4 of the Agreement... *Government is acting within the Constitution of the Cayman Islands in entering into and discharging its obligation under this Agreement.*
36. Again the Plaintiffs claim that because of the complete lack of transparency including the lack of information provided to the Legislature, 'Government' cannot be said to be acting within the Constitution.
37. The Plaintiffs claim therefore that the Agreement is in breach of the Constitution under Sections 19 and 24 in that *all decisions of public officials must be lawful,*

rational, proportionate and procedurally fair, and ...it is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless public official is required to do so by primary legislation, in which case the legislation shall be declared incompatible with the Bill of Rights and the nature of that incompatibility shall be specified.

PARTICULARS OF CLAIM

The *Ultra Vires* transfer of Crown Land to DRCL

38. The Road to be closed and disposed to DRCL is Crown land.
39. Crown Land is governed statutorily by the Governor (Vesting of Lands) Law (2005 Revision), (the "Crown Lands Law").
40. A "disposition" under the Crown Lands Law for the purposes of these proceedings means *a conveyance or transfer of a freehold.*
41. By Section 2 of the Crown Lands Law, *all lands, tenements and hereditaments in the Islands, belonging to or held in trust for her Majesty or acquired for the use of the Government, and which have not been sold, alienated or parted with, are declared to be vested in the Governor and held by him and his successors in the said office in trust for her Majesty, for the purposes for which the same were authorised or directed by any law, or in accordance with the terms of any conveyance, lease, will or other assurance executed in relation thereto.*
42. Section 6 of the Crown Lands Law states that the Governor, not the Governor in Cabinet, *may sell, exchange, grant or devise any of the lands tenements or hereditaments which shall be so vested in him in trust, and to do any other act, in relation to any such lands, tenements and hereditaments which he shall deem beneficial for the public service or for the better management thereof, (emphasis added), provided that except under the authority of some law, or under the terms of the trust affecting the same under any such conveyance, lease, will or other assurance as aforesaid or under Section 9, the Governor shall not sell, exchange or grant any of the said lands tenements or hereditaments so vested or to be vested in and held by him in trust as aforesaid.*
43. Section 9 of the Crown Lands Law states that *the Governor in Cabinet may (emphasis added) sell convey grant or devise any of the lands tenements or hereditaments respectively vested in the Governor under this Law, etc...provided that in cases where a sum of money is the consideration for the sale of any lands under this section, no conveyance shall be executed until such sum shall have been paid into the office of the Financial Secretary and his receipt endorsed upon*

the agreement of such conveyance and his certificate thereof lodged in the office of the Governor.

44. Section 10 of the Crown Lands Law sets out the requirements of the Law before a disposition can be lawful. Section 10(1) A disposition by the Governor under section 6 or by the Governor in Cabinet under Section 9, is void... unless, prior to the completion of such disposition (emphasis added)-

- Section 10(1) (a) full details of the land of which it is proposed to dispose, and of the terms of the proposed disposition, have been advertised in a newspaper circulating in the Islands and in the Gazette;*
- (b) a report, accompanied by the documents specified in subsection (2) and recommending the proposed disposition has been laid on the Table of the legislative Assembly for twenty-one days by the **Minister** responsible for lands; and*
- (c) a motion to reject the report has not been made within the period that the report is on the Table of the Legislative Assembly; or if such a motion has been validly made, it has been voted on and negatived by the Legislative Assembly.*

Section 10(2) the report laid on the Table of the legislative Assembly under subsection (1) shall be accompanied by –

- (a) a report by the proper officer in the ministry responsible for lands containing all the details and terms of the proposed disposition and the reasons for proposing it;*
- (b) a copy of the report of the survey required by paragraph 12(1) of the Cayman Islands Royal Instructions, 1972;*
- (c) a valuation by the Government's valuer of the land of which it is proposed to dispose;*
- (d) valuations by two independent licensed valuers of the land which it is proposed to dispose;*
- (e) a copy of the resolution of Cabinet approving the terms of the proposed disposition; and*
- (f) a copy of the advertisement of the proposed disposition published under subsection (1) (a)*

45. In 2005 an amendment to Section 10 of the Crown Lands Law, was introduced by the Legislative Assembly at section 10 (3) (an error in the amending document itself describes the section as 10 (2) A).

46. Section 10(3) of the March 2005 amendment states ... *Where, pursuant to section 9, the Governor in Cabinet proposes to sell, convey, grant or devise any lands, tenements or hereditaments –*

(a) to a statutory authority or government company ; or

(b) to any legal entity, in the public interest and for the purpose of agriculture, education, health, housing or any other similar purpose;

the Governor in Cabinet may (full emphasis added), waive any of the requirements of subsection (1) and (2).

47. Section 10 (3) appears to allow the Governor in Cabinet to waive (at his discretion) any of the numerous requirements set out in sections 10 (1) and (2) of the Crown Lands Law that would have forced Government (Cabinet) to bring a proper valuation by two independent licensed valuers of the road portion to be disposed of, and the Third Defendant to bring a full report to the Legislative Assembly for public consultation before any transfer took place and to ensure that no motion to reject the disposition had been made and voted on by the Legislative Assembly.

48. The Plaintiffs claim that the requirements under Section 10 (1) and (2) can be said to be minimum adequate safeguards that Crown Land is not subjected to unscrupulous deals between members of Government, their friends and eager developers as was found to be the case in the Turks & Caicos Islands, and would in any event be approved of under the terms of good governance by the United Kingdom Government.

49. The Plaintiffs aver that the Governor in Cabinet has in fact waived (or intends to waive once the road closure is gazetted) the requirements under Section 10 (1) and (2) of the Crown Lands Law which has allowed Cabinet to proceed with the Agreement without any of the safeguards necessary for the transparent and fiscally responsible accounting of Crown Land, and which has partially led to these proceedings.

50. However it is not at all clear to the Plaintiffs how under the Section 10 (3) waiver the Governor in Cabinet legally intends to proceed since the transfer is void under the Crown Lands Law if the conditions of section 10 (3) are not met. For e.g. DRCL the entity to receive the disposition is (a) not a *statutory authority*, not a *government company*, and (b) the Agreement with DRCL is not for the *purposes of agriculture, education, housing or any other similar purpose*, as

called for under Section 10 (3), and the Agreement does not call for the Road to be transferred to the Fourth Defendant, before being disposed to DRCL.

51. The Plaintiffs insist that the Fourth Defendant while it has the power to recommend roads to be closed in the ordinary conduct of its mandate under the Roads Authority Law, it does not have the power to recommend a road closure on the basis of the Agreement, i.e. based on a decision that to do so would be good for the Cayman Islands economy and certainly does not have the power to recommend that the First Defendant and or Governor in Cabinet ignore the Crown Lands Law when disposing the Road to DRCL.

The Plaintiffs Constitutional and Common Law Claims

52. As stated, the Plaintiffs proceed under section 26 of the Constitution, and specifically sections 18, 19 and 31 of the Constitution, and by common law rights where indicated.

53. Under S.18 of the Constitution, the Plaintiffs claim that the First Defendant has not given constitutional consideration to the interests of the Caymanian people when he considered the closing and disposition of the Road which the Plaintiffs claim is a national heritage site, and of cultural importance.

54. Section.18 of the Constitution, Part I, Protection of the environment:

(1) Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations while promoting justifiable economic and social development;

(2) to this end Government should adopt reasonable legislative measures to protect heritage (emphasis added), and wildlife and the land and sea biodiversity of the Cayman islands that (a) limit pollution and ecological degradation; (b) promote conservation and biodiversity, (c) secure ecologically sustainable development and use of natural resources.

55. The dictionary definition of heritage for the purpose of these proceedings is as follows, *valued objects and qualities such as cultural tradition, unspoiled countryside and historic buildings that have been passed down.*

“Cultural heritage is what we value from the past reflecting what we value or reject in our present surroundings, and anticipate for the future”, Davison G. 1991 ‘The Meaning of Heritage’.

Common Law

56. The Plaintiffs claim the West Bay Road (including the Road) was dedicated to the people of the Cayman Islands by Royal Grant for the benefit of the Cayman Islands people, as a right of way and right of passage with numerous access points to the beach and sea, and that continuous uninterrupted use of the Road and public beach access points for over 100 years has given the public of the Cayman Islands an easement either by common law prescription, the Prescription Law (1997 Revised), or by lost modern grant. The Plaintiffs claim that regardless of how the easement is arrived at, and because of the dedication of the road as a right of way and right of passage, the easement takes preference over the ability of the First Defendant or the Governor in Cabinet to dispose of the Road under the Crown Lands Law or any other law.
57. The Plaintiffs further claim that the sea view and beach access from the Road utilised by Caymanians and visitors alike is a natural heritage of the Cayman Islands and should be preserved as such.
58. On 12 December 2011 members of the public including the Plaintiffs provided the First Defendant with a petition containing some 4,000 signatures from citizens and residents from all over the Island who felt the road was a natural heritage and that the people of the Cayman Islands have enjoyed a right of way and right of passage over the Road for over 100 years.
59. The Plaintiffs note that the Governor passed the petition to the Premier of the Cayman Islands after making the comment to the Plaintiffs that issues regarding development are in the hands of elected officials. The Premier of the Cayman Islands as head of Cabinet according to the media, accepted the petition and then proceeded to ignore it.
60. The Plaintiffs claim that before the said disposition of the Road can get as far as the First Defendant acting in his capacity as Governor in Cabinet, i.e. under section 9 of the Crown Lands Law, the First Defendant must have acted personally under Section 6 in his capacity as a representative of Her Majesty in ensuring that the disposition of the Road, was, under section 6, of the law, *beneficial for the public service or for the better management thereof*:
61. For the First Defendant to agree in his personal capacity acting on behalf of Her Majesty, the Plaintiffs conclude that the First Defendant must have been familiar with the Agreement with the Cabinet and DCRL and has completely ignored the petition and the petitioners who claim the Road as a natural heritage site, and has given the Governor in Cabinet his own personal blessing to dispose the Road under Section 9 of the Crown Lands Law and as we have seen earlier in this claim, without the safeguards set out in subsections (1) and (2) of Section 10 of the Crown Lands Law.

Constitution

62. The Plaintiffs claim that the First Defendant and or Governor in Cabinet was, and is, obligated under Part II Section 31 (2) and (3) of the Constitution which states;

(2) The Governor shall exercise his or her functions in accordance with this Constitution and any other Law and, subject thereto, in accordance with such instructions (if any) as may be addressed to the Governor by or on behalf of her Majesty,

(3) In the exercise of his or her functions under subsection (2) the Governor shall endeavour to promote good governance and to act in the best interests of the Cayman Islands (emphasis added), so far as such interests are consistent with the interests of the United Kingdom.

63. The Plaintiffs therefore claim that the First Defendant under section 6 of the Crown Lands Law, when proceeding to dispose of land under section 9 as Governor in Cabinet, given the lack of transparency of the Agreement, and the large number of petitions received by Cabinet could not have arrived at a conclusion that the disposition of the Road to DRCL under the Crown Lands Law, *was beneficial for the public service..., or ...for the better management thereof,* without having an understanding of the Agreement and has therefore not acted in accordance with the Constitution in promoting *good governance and in the best interests of the Cayman Islands.*

64. If this is the case, the Plaintiffs claim that the First Defendant and or Governor in Cabinet has abdicated or will abdicate, his responsibility under the Crown Lands Law and under the Constitution in so approving the disposition of the Road to DRCL (a) by not giving due regard to the Plaintiffs and the Cayman Islands public's concerns with regard to their claimed right of passage over the Road and its beach /sea access, and (b) without the safeguards listed under section 10 (1) and (2) of the Crown Lands Law which would have resulted in the tabling of a report to the Legislature by Cabinet recommending the Agreement with DRCL.

65. Likewise the Plaintiffs claim that the Third Defendant has also abdicated his/her responsibility under Section 10 (1) and (2) of the Crown Lands Law and has not proceeded fairly as a result.

Fourth Defendants involvement with the Agreement

66. Under paragraph 27.2 of the Agreement... *Having considered the benefits of the West Bay Road and ETH Extension Plan and other terms of this Agreement, the NRA (fourth defendant), does hereby recommend and endorse the West Bay Road Legal Closure and the Raleigh Quay Legal Closure.*

67. The Plaintiffs claim that the Fourth Defendant has no mandate, expertise nor jurisdiction under either the Roads Law or the National Roads Authority Law (2005 Revision) to consider the economic benefits of the proposed Road legal closure and its disposition to DRCL under the Agreement and to endorse and recommend the legal closure on the basis of terms of reference called for under the Agreement by an independent review of the Agreement.
68. According to the Agreement at paragraphs 127.3...the *value of the Agreement to the Cayman Islands*, and 127.3.3 ...*government receiving value for money...* the value of the Agreement to the Cayman Islands shall be assessed by the entity conducting the independent review in the Agreement. The Plaintiffs claim therefore that the Fourth Defendant is not only illegally fettering its apparent discretionary power to approve the legal road closure and disposition to DRCL under the Agreement, and to recommend to the First Defendant closure under the Roads Law, but would in any event fetter any discretionary decision it would make under the terms of the Agreement because of its direct policy and directive involvement with the Third Defendant responsible for roads (and by implication, for the support of the Agreement generally within Cabinet), under section 6 of the National Roads Authority Law (2006 Revision).
69. The Fourth Defendant the Plaintiffs claim, must be seen to have acted impartially in its relationship with Government in order to avoid any question of bias since its mandate when it was created, was to administer, manage, develop and maintain the Islands public roads and related facilities, such as signals, storm water facilities, roadway lighting and directional signage. In other words the Plaintiffs claim, the Fourth Defendant should not in fact be a party to the Agreement except for its technical expertise in building and maintaining public roads.
70. When a recommendation from the Fourth Defendant has been received by the Governor in Cabinet under section 14 of the Roads Law, under sub sections (3) and (4) it would appear that the Governor in Cabinet must exercise his decision to dispose land which hitherto had been a public road to the owners of land adjacent to the road in question, (in our scenario to DRCL), fairly and justly and in a manner and to such a degree as he thinks appropriate, (emphasis added). Surely this can only be accomplished the Plaintiffs claim by strict adherence to the Crown Lands law and the safeguards outlined under Section 10 of that law.
71. The Third Defendant and by implication Cabinet including the Governor in Cabinet and the Fourth Defendant are clearly attempting to illegally side step the requirements of the Crown Lands Law under the guise of proceeding with the Agreement under Section 14 of the Roads Law.
72. Section 19. of the Constitution reads as follows

- (1) *All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.*
- (2) *Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.*

The definition of "public official" for the purposes of s.19 above is provided at s.28 (c) of the Constitution... *...includes a public or government body, including a statutory body or company or association in which the Cayman islands has an interest and which performs a public function or duty, (d) includes any organisation or person carrying out a public function or duty, including the Governor, except where the nature of their act is private.*

Monetary value

73. The Plaintiffs further claim that even a disposition of the Road under Section 9 of the Crown Lands Law, has a monetary value to the people of the Cayman Islands, irrespective of its cultural value, and this Section forbids a conveyance of Crown land unless monies have been paid into the Office of the Financial Secretary and his receipt endorsed upon the agreement of such conveyance and his certificate thereof lodged in the office of the Governor.

The Plaintiffs claim that this is the reason why an independent valuation of the land is required even if cash is not changing hands, if for no other reason than for the Financial Secretary to be able to make adjustments to the balance sheet of the Cayman Islands in order to comply with the Crown Lands Law under s.9.

Law incompatible with the Constitution.

74. The Plaintiffs under Section 23 of the Constitution also claim that the discretionary waiver under s.10 (3) of the Crown Lands Law as drafted when being utilised for multi-million dollar development projects with or without government private sector partnership deals, is incompatible with Sections 18, 19 and 24 of the Constitution and a declaration to this effect is sought

The Constitutional claims

75. The Plaintiffs claim therefore that the Agreement as it currently stands, between Cabinet, DCRL and the Fourth Defendant calling for the disposition of the Road cannot possibly promote good governance in its present lack of transparency and that the First Defendant and or Governor in Cabinet in exercising his discretion to ignore the requirements of section 10 (1) and (2) of the Crown Lands Law, has not acted in the best interests of the Cayman Islands as he is required to do under Section 31 of the Constitution, and because of the lack of transparency, the decision is not fiscally responsible with regard to United Kingdom directives.

76. In conclusion therefore, the Plaintiffs claim *inter alia* that under Section 19 of the Constitution, the First Defendant, Third Defendant and Fourth Defendant have not acted lawfully, have acted irrationally, and have not been procedurally fair in agreeing to and actioning the Road closure and disposition requirements of the Agreement with DCRL, and have abdicated their statutory and constitutional duties in doing so. The Plaintiffs seek declarations from the Court to this effect, and a declaration that the Agreement itself as a standalone contract is flawed and *ultra vires* for all the reasons given above.
77. The Plaintiffs also claim that the First Defendant and or Governor in Cabinet has breached sections 18, and 31 of the Constitution and seek declarations to this effect.
78. According to a recent press release by a Government Minister, the Second Defendant has approved the Report or at least the legal aspects of it. If this is true, the Plaintiffs ask for a declaration that the Second Defendant should in the interests of transparency, submit a report of his legal findings to the Legislative Assembly along with his Defence to these proceedings.
79. In conclusion the Plaintiffs seek a Protective Cost Order to cover these proceedings on the basis that the Plaintiffs are ordinary citizens of the Cayman Islands with no access to large financial resources and the fact that the proceedings are of extreme 'public interest and importance' and that the public interest requires the issues in these proceedings to be resolved.

And the Plaintiff's claim

- (a) A declaration that the Plaintiffs together with the people of the Cayman islands enjoy a common law prescriptive right of way and right of passage over the Road and its beach access points by way of dedication by Royal Grant to the people of the Cayman Islands, and/or;
- (b) A declaration that the Plaintiffs and the people of the Cayman Islands enjoy a prescriptive easement i.e. a right of way and or right of passage over the Road to be closed either by (i) virtue of the Prescription Law (1997 Revision), (ii) the doctrine of lost modern grant, (iii) unregistered equitable easement under Section 70 (a) of the Registered Land Law (2004 Revision).
- (c) A declaration that the Agreement between Cabinet (represented by the Third Defendant), DRCL and the Fourth Defendant as described above in the body of the claim which calls for the closure and Disposition of the Road to DRCL is *ultra vires* and void under sections 19 and 24 of

the Constitution for the statutory and constitutional reasons given above in the body of the claim, namely *inter alia* the illegal fettering of the Agreement by the Fourth Defendant and the non adherence to the Crown Lands Law by the Governor in Cabinet and Third Defendant;

- (d) A declaration that the First Defendant and or Governor in Cabinet has acted in breach of sections 18,19 and 31 of the Constitution, and the Third and Fourth Defendant has acted in breach of Section 19 of the Constitution as defined above in the body of the claim;
- (e) A declaration under Section 23 Cayman Islands Constitution Order 2009 that Section 10 (3) (a) (b) of the Governor (Vesting of Lands) Law (2005 Revision) is incompatible with Sections 18,19 and 24 as it ignores the importance of transparency and fiscal responsibility in the disposing of Crown land and the interests of good governance;
- (f) A declaration that any disposition of Crown Land to DRCL under the Agreement by way of the Governor in Cabinet approving the transfer under Section 9 of the Governor (Vesting of Lands) Law (2005 Revision) is void if in fact the requirements of Sections 10 (1) and (2) and (3) of that law are not followed, and that any disposition sought under the Roads Law Section 14 is likewise void unless the requirements of Section 10 (1) and(2) are followed;
- (g) A declaration that the Second Defendant reaffirm publicly his support for the legality of the Independent Report and by extension, the Agreement, on or before the Defence is due in these proceedings;
- (h) An inhibition on the Cayman Islands Land Registry restricting any transfer of the Crown land described above in the body of the claim as the Road, until further order of the Court;
- (i) A Protective Cost order;
- (j) Court fees and Legal fees;
- (k) Further or other relief as this Honourable Court deems fit.



IRVIN BANKS
Attorney-at-law for the Plaintiffs
25 February 2013

Irvin Banks, Attorney-at-law for the Plaintiffs
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IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2013

BETWEEN:

- (1) ALICE MAE COE**
- (2) ANNIE MULTON**
- (3) EZMIE SMITH**
- (4) BETTY EBANKS**

Plaintiffs

AND:

- (1) THE GOVERNOR OF THE CAYMAN ISLANDS**
- (2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS**
- (3) MINISTER FOR FINANCE, DISTRICT ADMINISTRATION, WORKS,
LANDS & AGRICULTURE**
- (4) NATIONAL ROADS AUTHORITY (NRA)**

Defendants

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED. Delay may result in Judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes No

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a Stay of Execution against any judgment entered by the Plaintiff (tick box)

Yes No

Service of the Writ of Summons is acknowledged accordingly

(Signed) _____
Attorney for the Defendant or Defendant in person

NOTE ON ADDRESS FOR SERVICE

Attorney: Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a Limited Company "residence" means its registered or principal office.

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his/her name, address and reference, if any, in the box below.

<p>Irvin Banks Attorney-at-Law 14 Rosemont Close George Town P.O. Box 1643 Grand Cayman, KY1-1109 Cayman Islands</p> <p>Tel: 345 325 6395 Fax: 345 945 9169</p> <p>irvin.banks@candw.ky</p>

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

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**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF
WRIT OF SUMMONS**

1. The accompanying form of ***Acknowledgment of Service*** should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion, it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the Proceedings ***must also serve a Defence*** on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for Judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter Judgment against him without further notice.

3. A ***Stay of Execution*** against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any Judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a Stay, Execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, ***issue a Summons*** for a Stay of Execution, supported by an Affidavit of his Means. The Affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

See over for Notes of Guidance

Notes for Guidance:

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a Writ served on the Defendant personally is treated as having been served on the day it was delivered to him/her.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a **FIRM** and an Attorney is not instructed, the form must be completed by a **PARTNER** by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual **TRADING IN A NAME OTHER THAN HIS OWN**, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a **LIMITED COMPANY** the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
7. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.