

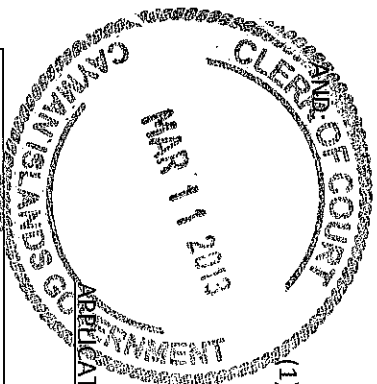
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁸⁵ OF 2013

BETWEEN:

MR. RUPERT LINGARD ACKERMON
 APPLICANT

(1) GOVERNMENT OF THE CAYMAN ISLANDS
 (2) NATIONAL ROADS AUTHORITY



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman

<p>Name, address and description of Applicant</p>	<p>Rupert Lingard Ackermom, retired, of 462 Northwest Point Road, West Bay, Grand Cayman</p>
<p>Judgment, order, decision or other proceeding in respect of which relief is sought</p>	<p>The following decisions and declarations of the Government of the Cayman Islands ("ClG") and the National Roads Authority ("NRA") made on or about 15 December 2011 and on dates unknown:</p> <p>(1) The decision to execute and execution of an Agreement with Dart Realty (Cayman) Ltd ("DRCL") dated 15 December 2011 as amended or varied subsequently on dates unknown (The said agreement, amendments and variations together referred to as the "Agreement")</p> <p>(2) The decisions to make and/or the Public Roads Declarations and other steps of unknown date purportedly made pursuant to or in consequence of the said Agreement to approve, adopt, lay out and maintain as public roads</p>

	<p>certain planned rights of way and to close certain public roads vesting land in DRCL as therein set out, including:</p> <p>a) To effect the closure of the West Bay Road and to vest a portion of the same in DRCL;</p> <p>b) To effect the closure of the Raleigh Quay Road (as referred to in the said Agreement) and to vest a portion of the same in DRCL;</p> <p>c) To approve the construction of the Esterley Tibbetts Extension (“ETH Extension”) (as referred to in the said Agreement).</p>
<p style="text-align: center;"><u>Relief Sought</u></p> <p>1. A Declaration that the aforesaid decisions and any consequential actions are void, erroneous in law, unconstitutional, unreasonable and/or contrary to the principles of Natural Justice;</p> <p>2. An Order of Certiorari to quash the decisions of the Respondents to enter into and/or implement the Agreement, to close the public roads vesting land in DRCL as therein set out and/or to approve, adopt, lay out and maintain as public roads the planned rights of way therein set out and/or to grant certain tax and other concessions to DRCL, its affiliates and assigns as also therein set out;</p> <p>3. An Order of Mandamus requiring the Respondents to keep open and maintain the West Bay Road and those other roads referred to in the Agreement purportedly to be legally closed as public roads.</p> <p>4. An order prohibiting the Respondents from implementing the said Agreement or otherwise vesting in DRCL the land referred to in the Agreement or alternatively staying its implementation and such vesting.</p>	

GROUNDNS ON WHICH RELIEF IS SOUGHT

1. The following grounds are categorised for convenience only and a number of the matters herein referred to are over-lapping and properly fall within several grounds. The Applicant reserves the right to add to and/or amend these grounds upon disclosure herein.
2. The Respondents were not lawfully entitled to reach the said decision or make the said direction and, in so doing, erred in law and in fact, acted unfairly and procedurally improperly. Further, the said decision and consequent direction were, in all the circumstances unreasonable.
3. Unconstitutionality
The Respondents failed to act lawfully and in accordance with the Cayman Islands Constitution and in particular paragraphs 19 and 24 of the Schedule to the Constitution namely to act lawfully, rationally and in a procedurally fair way and to give to the Applicant, inter alios, whose interests have been adversely affected, written reasons for entering into the Agreement; Further, CIg failed to in its duty to provide open and accountable Government in accordance with the Preamble to the said Schedule.
4. Errors of Law and Illegality
 - 4.1. The decisions of the Respondents were contrary to The Governor (Vesting of Lands) Law 2005 (the “Vesting Law”) and in particular sections 9 and 10 of the same,
 - 4.2. The Respondent failed to follow and apply the statutory scheme imposed by the Vesting Law and/ or acted ultra vires;
 - 4.3. The Respondents wrongly and unlawfully abdicated or fettered inalienable powers and duties, by way of example:
 - 4.3.1. CIg purporting to agree in futurity never to reinstate a road or portion of a road closed pursuant to the Agreement notwithstanding any future needs of the public and the Islands.
 - 4.3.2. The functions responsibilities and duties of the NRA pursuant to section 5 of the National Roads Authority Law (2006 Revision) and in particular to plan, design,

construct and protect public roads, to carry out location and design studies and tender contracts for public road improvement.

4.3.3. The duty to give dispassionate and independent recommendations and advice to the Governor in Council pursuant to sections 3 and 14 of the Roads Law (2005 Revision) (the “Roads Law”) in particular by incurring the obligations to advise and recommend in a particular way referred to in the Agreement and by purporting to agree, recommend and adopt as a right of way corridor the preliminary design of the ETH Extension and other proposed road and the closure of public roads in accordance with the same.

5. Procedural Impropriety and/or breaches of the Principles of Natural Justice

5.1. The Respondents acted in a procedurally improper manner and/or in breach of the Principles of Natural Justice in that they failed, neglected or refused:

5.1.1. To follow the statutory scheme imposed by the Vesting Law;

5.1.2. To consult adequately or at all;

5.1.3. To provide to those affected sufficient reasons and information at a sufficiently formative stage or at all to identify the advantages and disadvantages of the proposals and to make a proper and informed response;

5.1.4. To afford an opportunity to those affected to make representations as to the proposals and alternatives to them;

5.1.5. To provide adequate opportunity to those affected to meet the grounds upon which the decision was made either before or after the said decisions;

5.1.6. To make an open minded decision taking into account and in the light of any such representations.

6. Timing

6.1. It is not apparent, given the lack of information available to the Applicant, the extent to which the Agreement and the decisions of the Respondents it purports to record can be regarded as being final.

6.2. Insofar as the Applicant may be regarded as having failed to issue this application within three months from the date on which the grounds for the application first arose,

there are good reasons for extending the period within which the application may be made, particularly that the Applicant has, at all times, acted promptly and properly in:

6.2.1. making repeated attempts to enter into a dialogue with the First Respondent in an effort to avoid the commencement of proceedings. The First Respondent has declined or ignored every such attempt;

6.2.2. making repeated attempts to obtain information from the Respondents in an effort to better understand the terms of the Agreement so as to assess the extent to which the proceedings could be averted; and

6.2.3. seeking to secure funding and identify attorneys who were willing to act. The Applicant has experienced considerable difficulty in securing funding and representation.

Neil Timms QC

Mark Goodman



Campbells

8 March 2013



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