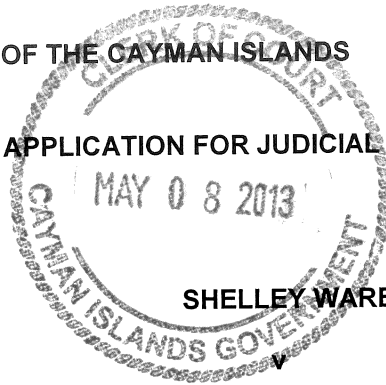


IN THE GRAND COURT OF THE CAYMAN ISLANDS

148  
CAUSE NO. of 2013

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO ORDER  
GCR ORDER 53



BETWEEN:

SHELLEY WARE

Applicant

CAYMAN ISLANDS AIRPORT AUTHORITY

Respondent

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**EX PARTE APPLICATION FOR LEAVE TO APPLY  
FOR JUDICIAL REVIEW**

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To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of Applicant	Shelley Ware Former Financial controller of the Cayman Islands Airport Authority ("CIAA") PO Box 31439 SMB Grand Cayman KY1 - 1206
Judgment, order, decision or other proceeding in respect of which relief is sought	The following Decisions of the Respondent (" <b>the Decisions</b> "):-  (1) Decision to terminate the employment of the Applicant on 7 December 2012 (exhibit <b>SW-1</b> );  (2) Decision to reserve the right to dismiss the Applicant for serious misconduct on 4 January

**Relief Sought**

The Applicant seeks leave of the Court to permit the Judicial Review of the aforementioned Decisions of the Respondent and seeks the following relief:-

- (1) An Order of *Certiorari* to quash the Decisions of the Respondent;
- (2) An Order of *Mandamus* requiring the Respondent to:-
  - i. Re-instate the Applicant to her former position;
  - ii. Remove any finding of misconduct, improper behaviour and/or poor performance from the Applicant's employment record;
  - iii. Pay any salary the Applicant would have earned between the date of the termination of her employment to the date of her re-instatement;
  - iv. Pay any pension contributions to the Applicant's pension provider from the date of the termination of her employment to the date of her re-instatement; and
  - v. Issue a public statement to the effect that, *inter alia*, the CIAA wrongfully terminated the Applicant's employment, that the Applicant has been re-instated to her former position, that any findings of misconduct or wrongdoing were incorrect and that she was an exemplary employee.
- (3) A Declaration that the Respondent acted *ultra vires* in terminating the Applicant's employment;
- (4) A Declaration that the Respondent acted *ultra vires* in declaring that they would have terminated the Applicant's employment for serious misconduct;
- (5) A Declaration that the Decisions were unreasonable and contrary to the principles of natural justice;
- (6) Such further and/or other relief as this Honourable Court thinks just; and
- (7) Costs

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## GROUNDS UPON WHICH RELIEF IS SOUGHT

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### *Introduction*

1. The Applicant was employed by the Chief Executive Officer (“**CEO**”) of the CIAA on 12 November 2009 as the Financial Controller of the CIAA (exhibit **SW-3**).
2. The CIAA is a substantive office of a public nature and permanent character which has been created by statutory provision, namely, section 3 (1) of the Civil Aviation Authority Law (2005 Revision).
3. The CEO of the CIAA is empowered to employ staff pursuant to section 16 (1) of the Airports Authority Act (2005 Revision) (the “**Airports Law**”). Section 16 (3) also states that the CEO shall determine the disciplinary procedures in relation to staff. The Contract of Employment states that her employer is the CEO.
4. The Applicant’s contract of employment was terminated by Richard Arch, Chairman of the CIAA, on 7 December 2012. She was informed of the termination of her employment at a board meeting and by way of letter. On or around the same day, Jeremy Jackson, the CEO of the CIAA, was suspended by the Board of Directors.
5. The decision to terminate the Applicant’s employment was made on the basis of an internal financial auditing report undertaken by a member of the Board of Directors. The Applicant was given no opportunity to respond to the findings of the report or address the Board of Directors.
6. On the 4 January 2013, Kerith McCoy, the Acting Chief Executive Officer of the CIAA, wrote a letter to the Applicant outlining the CIAA’s reasons for the termination of her employment and stating that the CIAA would reserve the right to dismiss her for serious misconduct.
7. The Applicant disputes the findings published in the internal auditing report and any allegations that she was guilty of serious misconduct.
8. Between the 7 December 2012 and February 2013 someone from the CIAA, with access to the internal auditing report, disclosed the report to a Member of the Legislative

Assembly, Ezzard Miller. The report was subsequently disclosed by Ezzard Miller to various newspaper publications which published a number of findings contained within the report.

### ***Grounds Upon Which The Relief Is Sought***

9. The Respondent was not lawfully entitled to reach the said Decisions and, in so doing, erred in law and in fact, acted, *ultra vires*, unfairly and procedurally improperly. Further, the said Decisions were unreasonable in all the circumstances.

### ***Errors of Fact***

10. The Respondent wrongly found that:-
- i) There was a factual basis for terminating the Applicant's contract of employment;
  - ii) The contract of employment empowered them to terminate the Applicant's contract of employment; and
  - iii) The Applicant was guilty of conduct that amounted to serious misconduct.

### ***Errors of Law and Illegality***

11. In reaching their Decisions the Respondent:-
- i) Acted outside their jurisdiction, statutory power and *ultra vires* in that they:-
    - Terminated the Applicant's contract of employment;
    - Conducted an internal audit of the CIAA that was undertaken by a Member of the Board;
    - Disclosed the internal audit report to a party outside of the CIAA; and
    - Held that they had the power to dismiss the Applicant for serious misconduct.
  - ii) Were ignorant of their legal powers and/or authority in that they:-

- Were negligent of the fact that the CEO of the CIAA was the only person authorised to terminate and/or dismiss any employees;
- Did not have power to terminate and/or dismiss any employees;
- Exceeded their authority as a supervisory body;

### ***Procedural Impropriety***

12. Further, or in the alternative, the Respondent acted in a procedurally improper manner and/or in breach of the principles of Natural Justice in that:-

- the Applicant did not have an opportunity to address the Board of Directors and/or the CEO before her contract of employment was terminated; and
- the Applicant did not have an opportunity to address the Board of Directors and/or the CEO before the decision was made that her conduct amounted to serious misconduct.

### ***Unreasonableness***

13. Further, or in the alternative, the said Decisions of the Respondent were unreasonable in that:-

- The Applicant's contract of employment was terminated without her having any opportunity to dispute and/or explain the findings in the internal auditing report;
- The Respondent acted outside their statutory authority in terminating the Applicant's contract of employment; and
- The Respondent disclosed the internal audit report to a person outside of the CIAA.

### ***Conclusion***

14. This application is made at the earliest opportunity pursuant to Order 53, rule 4(1) of the Grand Court Rules.

15. The Applicant will rely upon the Affidavit of Shelley Ware sworn on 7 May 2013 to which the documents referred to herein are exhibited.

16. Further, the Applicant reserves his right to amend and/or supplement these Grounds in due course as permitted by Order 53, rule 6(2) of the Grand Court Rules, if required or if so ordered by this Honourable Court.

Dated this 7<sup>th</sup> day of May 2013

*Stuarts Walker Hersant*

**STUARTS WALKER HERSANT**  
**Attorneys-At-Law for the Applicant**