

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO. 534 OF 1997**

**BETWEEN:**

**ANTHONY HARRY CUPID**

**PLAINTIFF**

**- AND -**

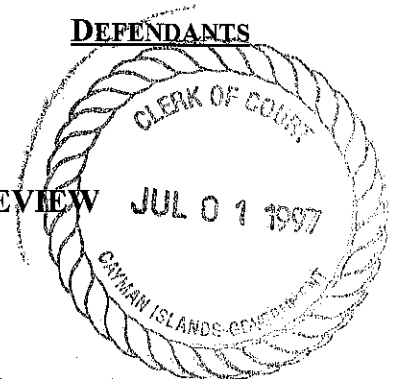
**(1) THE QUEEN**

**(2) THE IMMIGRATION BOARD**

**(3) THE CHIEF IMMIGRATION OFFICER**

**DEFENDANTS**

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



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

**Name, address and description of applicant**

Anthony Harry Cupid, of 28 Amanda Drive, Scarborough, Ontario M1V 1C9, Toronto, Canada, Citizen of St. Vincent and the Grenadines.

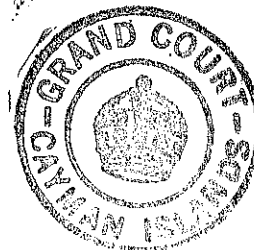
**Judgment, order, decision or other proceeding in respect of which relief is sought**

The decision of the Chief Immigration Officer on 4th April 1997 to deny the Plaintiff permission to land in the Cayman Islands as a visitor and the refusal by the Immigration Board of the Plaintiff's appeal against the said decision on 20th May 1997.

**Relief Sought**

Judicial review in the form of:

- (1) An Order of Certiorari to remove into the Grand Court of the Cayman Islands and to quash the said decision and said refusal of the Plaintiff's appeal; and/or
- (2) An Order of Mandamus to oblige the Defendants to reconsider their decisions in accordance with the law and/or the Plaintiff's legitimate expectation and to compel the Defendants to



grant the Plaintiff permission to land in the Cayman Islands as a visitor; and/or

- (3) A Declaration that the said decisions and the bases thereof were unlawful and/or irrational and/or procedurally improper and/or in breach of statutory duty; and/or
- (4) A Declaration that the Plaintiff was and is entitled to be granted permission to land in the Cayman Islands as a visitor subject to sections 44 and 45 of the Immigration Law; and/or
- (5) Interim relief in the form of an injunction, pending determination of the Plaintiff's Application for Judicial Review, restraining the Defendants from denying the Plaintiff permission to land in the Cayman Islands as a visitor; and/or
- (6) Interim relief in the form of a stay of execution of the Defendants' said decisions, to the effect that the Plaintiff be permitted to land in the Cayman Islands as a visitor subject to sections 44 and 45 of the Immigration Law.

The Plaintiff requests an oral application for leave in view of the interim relief sought.

**Name and address of  
applicant's attorneys, or, if  
no attorneys acting, the  
address for service of the  
applicant**

Ritch & Conolly, 3rd Floor Royal Bank of Canada  
Building, P.O. Box 1994, George Town, Grand  
Cayman

Signed

Ritch & Conolly

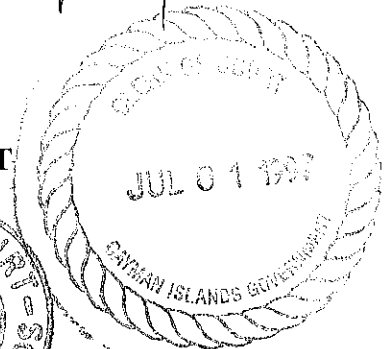
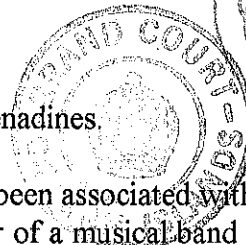
Dated

1<sup>st</sup> July 1997

### GROUNDS ON WHICH RELIEF IS SOUGHT

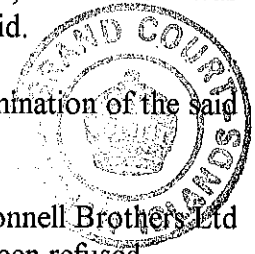
#### THE FACTS

1. The Plaintiff is a citizen of St. Vincent and the Grenadines.
2. The Plaintiff has lived and worked in and otherwise been associated with the Cayman Islands ("the Islands") since 1980 (inter alia) as a member of a musical band by the name of "The Tradewinds" and as a special Police Constable (for some 13 years).
3. The Plaintiff owns property in the Islands and has a bank account with a bank in Grand Cayman.
4. The Plaintiff has an 8 year old son who has Caymanian status and who lives in Grand Cayman.





- The Plaintiff assists in supporting his son and his son's mother.
5. In about June or July 1996, the Plaintiff was advised by the then Chief Immigration Officer Mr. Gerald McGuire that he must seek the prior leave of the Immigration Department before visiting the Islands. No reason was given for this stipulation.
  6. The Plaintiff arrived in Grand Cayman on 30th December 1997 and was given permission to stay until 13th January 1997.
  7. On 7th January 1997, an application was lodged for the grant of a work permit to the Plaintiff by Kirkconnell Brothers Ltd, to enable the Plaintiff to work at the Royal Palms Beach Resort as a Bartender/Entertainer.
  8. On 13th January 1997, the Plaintiff made an application for an extension of his stay, on the ground that he was awaiting the outcome of the said application for a work permit. The Plaintiff left his passport with the Immigration Department, as requested, and paid the C\$10.00 processing fee. The Plaintiff made it plain at the time of lodging the application with the Immigration Department that he was otherwise supposed to leave the Islands later that day. At that time he was not advised to leave the Islands pending determination of his application for an extension of his stay.
  9. No decision regarding the Plaintiff's application for an extension of his stay was ever made or alternatively communicated to the Plaintiff.
  10. On numerous occasions in January and February 1997, the Plaintiff attempted to telephone the Chief Immigration Officer, Mr. Orrett Connor ("Mr. Connor"), and attended the Immigration Department in person in order to ascertain the outcome of the said applications.
  11. The Plaintiff was given no information as to the progress of his applications. Mr. Connor did not return or respond to the Plaintiff's telephone calls. On one occasion, the Plaintiff was informed that matters were delayed because his passport had been mislaid.
  12. At no time was the Plaintiff advised to leave the Islands pending determination of the said applications.
  13. By a letter dated 4th February 1997, the Immigration Board advised Kirkconnell Brothers Ltd that the application for the grant of a work permit for the Plaintiff had been refused.
  14. The Plaintiff subsequently spoke to the Chairman of the Immigration Board, Mrs. Lorna Hampson, who informed him that the Board would have granted him a work permit, but that Mr. Connor told the Board not to do so on the ground that the Plaintiff had "an Immigration problem".
  15. On 24th February 1997, an appeal against the Immigration Board's said decision was lodged on behalf of the Plaintiff. The Plaintiff is still awaiting the decision of the Governor in Council

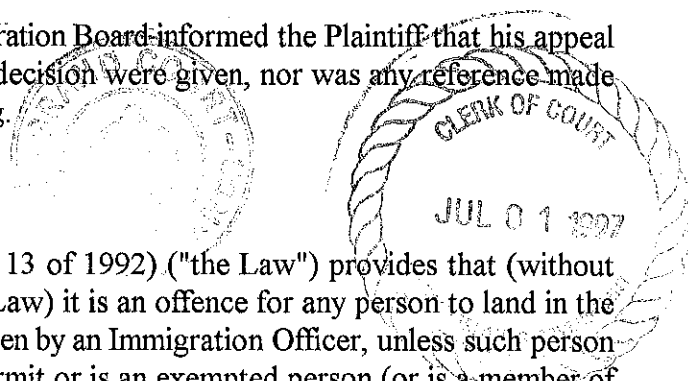


in respect of such appeal.

16. The Plaintiff left Grand Cayman of his own accord on 11th March 1997.
17. The Plaintiff returned to Grand Cayman in the evening of 29th March 1997 in order to transact some necessary business with his bankers, whereupon he was ordered by Mr. Connor to leave the Islands on the first flight the next morning.
18. The Plaintiff thereupon went to visit the Deputy Chief Secretary, Mr. Donnie Ebanks, and explained his need to attend to some necessary business with his bankers before he left the Islands.
19. Mr. Ebanks gave the Plaintiff permission to stay so that the Plaintiff could "go ahead and do what [he] had to do", that is, until 1st April 1997, when the Plaintiff's bank was due to reopen after the Easter holiday.
20. In the event, the Plaintiff's bankers were unable to complete their business with the Plaintiff until the morning of 2nd April 1997, whereafter the Plaintiff left Grand Cayman.
21. By a letter dated 3rd April 1997, permission was sought on behalf of the Plaintiff to enter the Islands on or around 14th April 1997 for some 14 days for the purpose of transacting some further business with his bankers and to visit his son.
22. Mr Connor refused to give such permission by a letter dated 4th April 1997, on the ground that the Plaintiff had previously overstayed his authorisation to remain in the Islands after 13th January 1997 by 2 months, and on the additional ground that "on March 29th 1997 after being granted temporary admission in condition that he depart the following day, he failed to adhere to the said conditions, and only departed on April 2nd 1997".
23. By a letter dated 12th April 1997, an appeal was lodged on behalf of the Plaintiff against the decision of Mr. Connor. A request was made for an oral hearing in the said letter.
24. No oral hearing was afforded to the Plaintiff, and no decision not to afford the Plaintiff an oral hearing was communicated to him.
25. By a letter dated 20th May 1997, the Immigration Board informed the Plaintiff that his appeal had not been allowed. No reasons for such decision were given, nor was any reference made to the Plaintiff's request for an oral hearing.

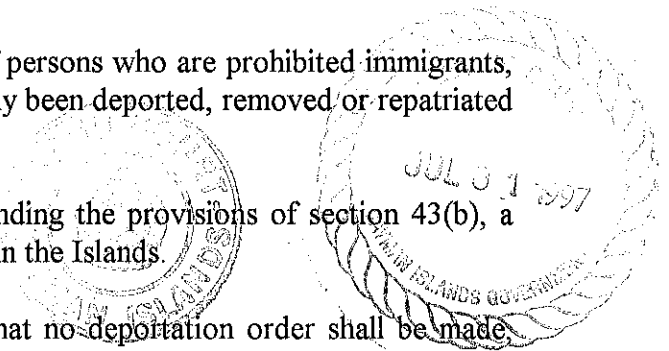
## THE LAW

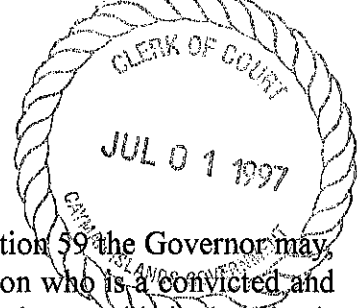
26. Section 43 of the Immigration Law (Law 13 of 1992) ("the Law") provides that (without prejudice to succeeding provisions of the Law) it is an offence for any person to land in the Islands without specific permission being given by an Immigration Officer, unless such person possesses Caymanian status, has a work permit or is an exempted person (or is a member of



such person's household) or has permission to remain permanently in the Islands.

27. Section 44(1) of the Law provides (inter alia) that persons other than those referred to in section 43 and who are not prohibited immigrants may be granted permission to land in the Islands as visitors for a period of up to 6 months, subject to extension from time to time for further periods not exceeding 6 months on each occasion upon application made to the Chief Immigration Officer in the prescribed manner.
28. Sections 44(2) and (3) of the Law provide that any permission granted under subsection (1) or any extension thereof may at any time be revoked (inter alios) by the Chief Immigration Officer acting in person, and that upon so doing he shall cause to be served upon the person concerned notice of any such revocation in which shall be specified a time not being more than 14 days within which such person shall be required to leave the Islands.
29. Section 45 of the Law (inter alia) empowers an Immigration Officer to require a visitor to satisfy him that such person possesses a paid up return ticket away from the Islands and is in possession of sufficient funds to maintain himself and his dependents during his stay, and also to attach such conditions or restrictions as he may think fit to any permission granted to any person under section 44.
30. Sections 52(1)(c), (2) and (3) of the Law provide (inter alia) that whoever remains or resides in the Islands, where such remaining or residing is or would be in contravention of any provision of this Part, is guilty of an offence; that an Immigration Officer or constable may arrest without warrant any person who has committed such an offence; and that a person who has been convicted of such an offence may be detained for up to 7 days if it is the intention of the Chief Immigration Officer to recommend the making of a deportation order in respect of such person.
31. Section 56 of the Law defines eight categories of persons who are prohibited immigrants, including (inter alios) any person who has previously been deported, removed or repatriated from the Islands.
32. Section 57 of the Law provides that notwithstanding the provisions of section 43(b), a prohibited immigrant shall not be allowed to land in the Islands.
33. Section 59(1) of the Law provides (inter alia) that no deportation order shall be made otherwise than in the case of a convicted and deportable person or of a person who has been convicted of an offence contrary to section 52(1)(c) unless a magistrate shall have reported on the case and the Governor, having had regard to the findings of fact and conclusions of law and any recommendation contained in such report, is satisfied that such order may fitly be made.
34. Sections 59(2) and (3) of the Law provide for notification to and attendance before a summary court by such a person, and for the taking of evidence and the making of the magistrate's report.

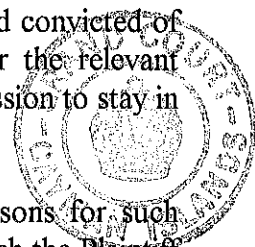




35. Section 60(1) of the Law provides (inter alia) that subject to section 59 the Governor may, if he thinks fit, make a deportation order in respect of any person who is a convicted and deportable person or a person whose permission to land and to remain or reside in the Islands or any extension thereof has expired or has been revoked and who fails to leave the Islands.

## GROUND

36. Mr. Connor's refusal to grant the Plaintiff permission to land in the Islands was unlawful by reason of the fact that he had no power under the Law to do so, since the Plaintiff was not and is not a convicted or deportable person or a prohibited immigrant.
37. Further or alternatively, by virtue of not being a convicted or deportable person or a prohibited immigrant, the Plaintiff enjoyed a legitimate expectation that he would be granted permission to land in the Islands and Mr. Connor's said refusal was a breach of that legitimate expectation.
38. Further or alternatively, Mr. Connor's said refusal was irrational and a decision which no reasonable Immigration Officer could make.
39. Further or alternatively, Mr. Connor's treating the Plaintiff as if he were a convicted or deportable person or a prohibited immigrant was a breach of natural justice.
40. It is contended that the extent of an Immigration Officer's discretion under section 44(1) of the Law is in determining the length of the period of a visitor's stay in the Islands.
41. It is further contended that unless and until the Plaintiff was arrested for and convicted of "overstaying" and/or was the subject of a deportation order made under the relevant provisions of the Law, he was and remains entitled to land and to seek permission to stay in the Islands for up to 6 months as a visitor.
42. If and insofar as the Plaintiff may have previously "overstayed", the reasons for such "overstaying" could be taken into account in determining the period for which the Plaintiff would be permitted to stay in the Islands.
43. It is contended that a reasonable period, in the circumstances of the Plaintiff, taking account of the purpose of his visit and having regard to the reasons for the 2 instances of his "overstaying" in the past, would be at least 1 week.
44. Further, the Immigration Board misdirected itself in law in upholding Mr. Connor's said decision and in refusing the Plaintiff's appeal.
45. Further or alternatively, the determination of the Plaintiff's appeal by the Immigration Board without granting the Plaintiff's request for an oral hearing was procedurally improper and a breach of natural justice.



46. Further or alternatively, by virtue of the gravity of Mr. Connor's said decision and having requested an oral hearing, the Plaintiff enjoyed a legitimate expectation that such request would be granted and the said determination of the Plaintiff's appeal without granting the Plaintiff's said request was a breach of the Plaintiff's said legitimate expectation.

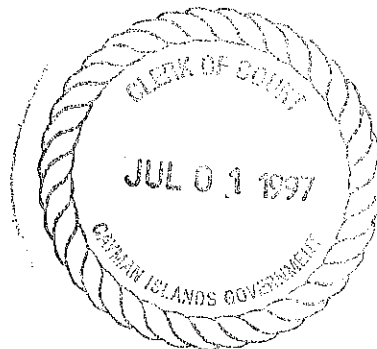
**INTERIM RELIEF**

47. Since the effect of the decision of Mr. Connor and of the Immigration Board is that the Plaintiff is unable to visit his son in the Islands and to conduct necessary business with his bankers in Grand Cayman (inter alia for the purpose of providing financial support for his son and his son's mother), the Plaintiff seeks an interlocutory injunction or a stay of the Defendants' said decisions, so that he may be permitted to land in the Islands pending the full hearing of this application.

48. Further, the Plaintiff wishes to visit the Islands in order to attend a wedding on 19th July 1997 and for this reason also seeks the said interim relief.

DATED this 1<sup>st</sup> day of July 1997

*Ritch & Conolly*  
RITCH & CONOLLY



FILED by Messrs. Ritch & Conolly, Attorneys-at-Law for the Plaintiff herein, whose address for service is that of his said Attorneys-at-Law, P.O. Box 1994, 3rd Floor, Royal Bank Building, George Town, Grand Cayman, B.W.I.