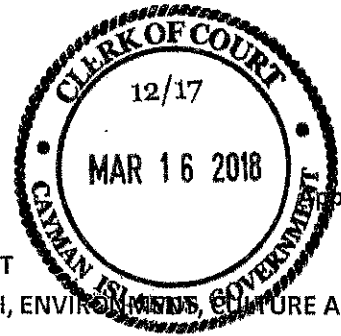


IN THE GRAND COURT OF THE CAYMAN ISLANDS

457  
CAUSE NO: OF 2018

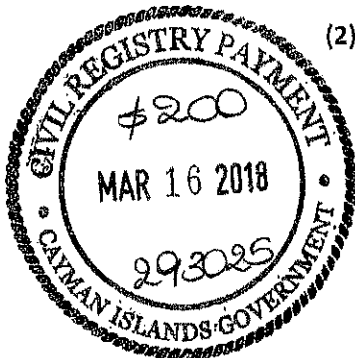
BETWEEN:

- (1) CEDAR VALLEY LTD
- (2) FLAMSTEAD LTD



AND:

- (1) THE CABINET
- (2) THE CHIEF OFFICER OF MINISTRY OF HEALTH, ENVIRONMENT, CULTURE AND HOUSING



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(s)	<p>The Applicants are:</p> <ul style="list-style-type: none"> <li>(1) Cedar Valley Ltd ("<b>CVL</b>"), a duly incorporated Cayman Islands Company who are the registered proprietors of property known as Registration Section Lower valley, Block 32D, Parcel 304.</li> <li>(2) Flamsted Ltd ("<b>FL</b>"), a duly incorporated Cayman Islands Company who are the registered proprietors of property known as Registration Section Lower valley, Block 32D, Parcel 124.</li> </ul>
Judgment, order, decision or other proceeding in respect of which relief is sought	Relief is sought in respect of all decisions made by the Ministry of Health, Environment, Culture and Housing (" <b>the Ministry</b> ") and Cabinet in relation to a Coastal Works application submitted by the Proprietors of

	<p>Strata Plan No.39 ("the Application") in respect of Parcel 32D122, Registration Section Lower Valley.</p> <p>The dates of the decisions are presently unknown, save that the Cabinet Decision appears to have been taken in the week prior to 20 February 2018 and the Third Ministry Decision (as defined below) appears to have been taken shortly thereafter.</p>
<p><b>Relief Sought</b></p> <p>(i) orders of certiorari quashing the First Decision, Second Decision, Third Decision and Cabinet Decision (as defined in the grounds below).</p> <p>(ii) an interim injunction restraining the Coastal Works presently being undertaken, pending trial.</p> <p>(iii) An Order for discovery against the Ministry and Cabinet pursuant to Order 24.</p> <p>(iv) Costs.</p> <p>(v) Such further or other orders or declarations as the court deems just.</p>	
<p>Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant</p>	<p>The Applicants are represented by Nelson &amp; Company, 31 The Strand, PO Box 2075, Grand Cayman KY1-1105.</p> <p>Ref CF/ND6530-55</p>
<p>Signed</p> <p><i>Nelson &amp; Co</i></p>	<p>Dated 16<sup>th</sup> March 2018</p>

## GROUNDS ON WHICH RELIEF IS SOUGHT

### The First and Second Decisions

1. In or around mid-October 2017, it came to the attention of CVL and FL, that Proprietors of Strata Plan No.39 ("**SP39**") had submitted a Coastal Works Licence Application ("**the Application**") in respect of Parcel 32D122, Registration Section Lower Valley.
2. CVL and FL own properties adjacent to SP39.
3. Although, CVL and FL did not receive a formal notice until later, they set out objections to the Application in a letter written by Mr. John V. Broadbent to the Department of the Environment, dated 19 October 2017.
4. The Application Notice, dated 30 August 2017 when it was received, referred to SP39 as the Proprietors, of strata Plan No. 39. In view of correspondence which has been received it is not known whether this is correct.
5. The Application Notice described the proposed works in the following terms:

*"Notice is hereby given that the Proprietors of strata Plan 39 have submitted a coastal works application to the Ministry of Health, Environment, Culture and Housing for proposed rehabilitation work to the existing groynes on Block 32D Parcel 122, Beach Bay Swimming cove, Lower valley, Grand Cayman..." [Emphasis Added]*
6. Notwithstanding this description, the intent of the works was not to rehabilitate, but to carry out new works in Cayman waters.
7. Rather than carry out reconstruction and repair of the previously permitted and existing structures SP139 sought to construct a greater number of larger groynes absent the existing culverts and bridge. It was an application to construct an entirely new coastal structure under the guise of a *rehabilitation*.
8. The existing structures consisted of an eastern groyne with several large culverts built into it which allowed water to flow through the groyne from east to west. The western groyne was much smaller in size and had a bridge to shore so that water was allowed to flow from the culverts through the lagoon and along the shore line from east to west.
9. The Application sought the construction of three groynes much larger groynes, with limited facilities for the flow of water from east to west only at the southern end which is much further out and in deeper water. As such the constructions of these structures will have a great and serious impact on the *sand conveyer* which will have an effect not just on the immediate

beach areas but others along the coastline. In this regard CVL and FL rely upon the expert reports appended to Mr. Broadbent's letter.

10. As well as welfare of the coastline, the welfare of local wildlife, in particular, turtles which nest at the beach is also likely to be affected.
11. Accordingly, the Application Notice was inaccurate and erroneous.
12. In accordance with its own policy, practice, and procedure the Ministry of Health, Environment, Culture and Housing ("*the Ministry*"), if SP39 had intended to rehabilitate and restore the existing groynes, should have required SP39 to submit a "*Reconstruction/Repair of Previously-Permitted Coastal Structures*" application form. They did not follow this procedure.
13. Having been described as a rehabilitation, residents and neighbouring property owners including CVL and FL were entitled to expect the Application by SP39 to involve simply a restoration of the groynes to their former condition, the location and footprint remaining unchanged.
14. CVL and FL had a legitimate expectation that the Ministry would ensure, prior to making its recommendation to Cabinet, in accordance with its own policy, practice and procedure, that accurate and proper notices were given to it, and the public in general.
15. There was a duty to consult CVL and FL and the public before the Application was considered, and a recommendation was made to Cabinet, given that the application if successful would inevitably affect the coastline, the local wildlife and CVL and FL's property in a particularly significant manner. In order for such consultation to be effective proper and accurate notice to all stakeholders required for overall fairness.
16. Alternatively, if there is merely a discretion on the part of the Ministry whether to consult persons in the position of the CVL and FL, then they had a legitimate expectation that they would be consulted in this situation, arising from the Ministry's own practice policy and procedure.
17. Alternatively, the decision to consider the Application was itself irrational for want of consideration of the relevant matters set out above.
18. On a date currently unknown to CVL and FL, the Ministry considered the Application and supporting documents ("*the First Decision*") and thereafter on a date currently unknown to CVL and FL made its recommendation to Cabinet in respect of the Application ("*the Second Decision*").
19. The First and Second Decisions were:
  - (i) made contrary to the Ministry's own policy, practice and procedure;
  - (ii) contrary to the rules of procedural fairness and natural justice; and were
  - (iii) unreasonable and irrational

in that the Ministry failed to require proper and accurate notice be given to affected land owners, including CVL and FL and the general public.

20. Further, or in the alternative, the Ministry's coastal works application instructions require SP39 to have been unequivocal, straightforward and candid with regard to the nature of the works for which it sought a licence. The failure of the Ministry to require that the proposed works be described in a clear-cut manner to those with an interest in the outcome of the Application, prior to the First and Second Decisions was irrational and procedurally improper in that CVL and FL (and the general public) were unfairly prevented from raising objections, concerns, or adding any constructive feedback by way of consultation with government agencies.
21. In acting in such a manner and making the First and Second Decisions CVL and FL (as well as the general public) were not afforded a proper opportunity to be heard on the Application, contrary to rules of natural justice.
22. In such circumstances, the First and Second Decisions were a disproportionate exercise of the Ministry's powers relating to coastal works applications.
23. Further or alternatively, the Ministry failed to give adequate reasons for its the First and Second Decision and its failure to follow its own practice, policy and procedure and despite requests contrary to s19 of the Cayman Island Constitution. The failure to provide reasons renders the Decision irrational.
24. Notwithstanding requests, CVL and FL have not seen the material considered by the Ministry, however, they have been informed that notwithstanding the Ministry's failure to follow its own policy and act in the manner described, it does not consider CVL or FL to have been prejudiced and that they have had an opportunity to be heard. Even if that were so, which is not accepted, the Decisions were procedurally improper in that the general public were not accurately informed as to the nature of the proposed works such as to allow for meaningful engagement in the consultation process.
25. CVL and FL seek an order of certiorari quashing the First and Second Decisions and such further or other orders as the Court may deem just or necessary in respect of the decisions that flowed from them.

#### **The Information Request**

26. On 20 February 2018, CVL and FL, by their attorneys wrote to the Ministry outlining concerns, inviting it not to consider the Application and making a request for disclosure and information.
27. On 28 February 2018, a letter was received from the Attorney General's chambers advising CVL and FL that they were reviewing the matter on behalf of the Ministry and seeking an extension to respond until 7 March 2018.

28. In an email reply of 1 March 2018, CVL and FL's attorneys indicated that an extension until 7 March 2018 was acceptable subject to an undertaking that no steps would be taken in respect of the Application until we a response and disclosure was received.
29. By letter of 3 March 2018, Crown counsel responded in terms that the Application had been granted in the week prior to the letter ("*the Cabinet Decision*") and SP139 had been notified.
30. In an email reply of the same date CVL and FL's attorneys sought further information and an undertaking from the Ministry that no further steps would be taken in respect of the Application until a full response was received.
31. On a date unknown, the Ministry issued a Coastal Works Permit ("*the Third Decision/the Permit*")
32. At the date of issue, no substantial response has been received to the letter of 20 February 2017.
33. On 7 March 2018, SP139 commenced the Coastal Works.
34. In the Coastal Works Notice posted at the site the works are once again described as "*Groyne Rehabilitation*"
35. On 9 March 2018, Crown counsel sought an extension of time to provide a substantial response to the close of business that day.
36. A response was received on 12 March 2018, but it was not substantive. It did not address the information requests or provide reasons for the decisions made.
37. In response to a further request for information and pre-action protocol letter sent by our attorneys of 12 March 2017, a further letter from Crown Counsel was received which failed to provide any additional information or address the issues raised.
38. To date no substantive response or reasons of any of the decisions have been provided.
39. The Coastal Work continues.

#### **Interim Injunction**

40. In the absence of compliance with the information request, and by reason of the grounds set out above, CVL and FL seek an interim injunction restraining the Coastal Works being carried out.

#### **The Cabinet Decision**

41. Further or in the alternative, CVL and FL are, as set out in their letter to the Ministry, legitimately concerned that:
- (a) the Coastal Works will affect an active turtle nesting beach, which will put the turtle population at risk;
  - (b) will have significant repercussions for the transport of sand resources resulting in significant erosion to the beach and adjacent beach properties;
  - (c) have a serious impact upon conservation, the protection of the endangered species;
  - (d) Have a detrimental effect on amenity value. In particular, that damage to the beach, is likely to have a negative impact on the value of neighbouring properties.
42. Although, notwithstanding request, CVL and FL have not seen the material considered by the Ministry and the Cabinet, In light of the material provided by CVL and FL insofar as it relates to beach erosion and sediment transport routes and the conclusions reached by the experts in those reports, the impugned decisions to grant a coastal works permit are decisions which are irrational and unreasonable in light of the expert conclusions.
43. Alternatively, the Cabinet and Third Decisions were irrational for want of consideration of the relevant matters set out in those expert reports and the concerns expressed by FL and CVL.
44. Alternatively, the Ministry and/or Cabinet made the impugned Decisions without being satisfied, and having any, or adequate regard, to the facts and matters set out at section 21 of the National Conservation Law (2013 Revision).
45. The Cabinet and/or the Ministry have failed to provide any/or adequate reasons for the Cabinet Decision and/or the Third Decision and despite requests contrary to s19 of the Cayman Island Constitution.
46. Further, the failure of the Cabinet and Ministry to provide reasons for the decisions renders the Decisions irrational.
47. Further, contrary to section 21(4) of the National Conservation Law, the Defendants have acted unlawfully in failing to provide to CVL and FL copies of all documents relevant to their decisions.
48. In the premises, CVL and FL seek orders of certiorari quashing the Cabinet Decision and consequentially, the Third Decision.