

No. 53

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: of 2020

AND IN THE MATTER OF GCR ORDER 53, RULE 3 AND GCR ORDER 28, RULE 1

BETWEEN: (1) THE PROPRIETORS OF STRATA PLAN NO. 331
(2) THE PROPRIETORS OF STRATA PLAN NO. 142
(3) THE PROPRIETORS OF STRATA PLAN NO. 17
(4) THE PROPRIETORS OF STRATA PLAN NO. 122
(5) THE PROPRIETORS OF STRATA PLAN NO. 81
(6) THE PROPRIETORS OF STRATA PLAN NO. 3
(7) THE PROPRIETORS OF STRATA PLAN NO. 10A
(8) THE PROPRIETORS OF STRATA PLAN NO. 148
(9) THE PROPRIETORS OF STRATA PLAN NO. 26



APPLICANTS

AND:

THE PLANNING APPEALS TRIBUNAL

DEFENDANT

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)	(1) The Proprietors of Strata Plan No. 331 ("Mandalay") (2) The Proprietors of Strata Plan No. 142 ("The Commonwealth") (3) The Proprietors of Strata Plan No. 17 ("Christopher Columbus") (4) The Proprietors of Strata Plan No. 122 ("The Heritage Club") (5) The Proprietors of Strata Plan No. 81 ("Discovery Point Club") (6) The Proprietors of Strata Plan No. 3 ("Silver Sands") (7) The Proprietors of Strata Plan No. 10A ("The Renaissance") (8) The Proprietors of Strata Plan No. 148 ("The Palms") (9) The Proprietors of Strata Plan No. 26 ("The Anchorage")
Judgment, order, decision or other proceeding in respect of which relief is sought	The decision dated October 15, 2020, given by the Defendant, acting in its capacity as the Appeals Tribunal in respect of an Appeal brought by the Applicants, whereby the Defendant refused the Applicants an opportunity to be heard in respect of the application it intended to make to seek leave to adduce fresh evidence in the form of an Affidavit exhibiting notes of the hearing relating to the Appeal, whereby the Defendant purportedly convened a "virtual meeting" <i>in camera</i> , without notifying the Applicants, to thereby purportedly hear the Applicants' application to adduce fresh evidence, and thereupon purporting to refuse to permit the Applicants leave to adduce fresh evidence and to further grant leave to permit the

Second Respondents in the Appeal, to produce fresh evidence to counter the Applicants case in the Appeal, without that party making any application for the same and without any supporting Affidavit to attest to the veracity and accuracy of such evidence being made by the Second Respondent to the Appeal.

The further decisions taken by the Defendant in pursuit and/or in furtherance of the decision of October 15, 2020:

a. to allow the inclusion into the Record of Appeal a number of sketches purporting to be reproductions of the sketches drawn by the Second Respondent's architect on a whiteboard which whiteboard he wrote and/or drew on and which he showed exclusively to the Central Planning Authority at the hearing of the appealed application, to be considered as fresh evidence in the Appeal, without such fresh evidence being accompanied by an Affidavit attesting to its veracity and accuracy;

b. refusing to disclose to the Applicants the identity of the composition of the Planning Appeals Tribunal panel who participated in the October 15 decision in order for the Applicants to consider whether there may be a conflict of interest in respect of any of the members of the Tribunal sitting in respect of the hearing;

c. to insist on the Appeal being heard by the same Chairman and panel of tribunal members which made the October 15th 2020 decision, despite protest from the Applicants as to the apparent bias of that Chairman and panel;

d. to insist that the Applicants must provide written submissions in respect of a recently amended Record of Appeal without the Applicants being able to ascertain and challenge the veracity or accuracy of the fresh evidence which the Defendant has permitted to be included in the Record of Appeal;

e. to refuse to adjourn the hearing of the Appeal so as to thereby force the Applicants to prepare written submissions and to attend the substantive hearing of the Appeal without affording them the opportunity to make a prior application to adduce their proposed fresh evidence, which preliminary

application and hearing would substantively affect the Applicants' written submissions and grounds of appeal.


Relief Sought

The Applicants seek the following relief:

1. A declaration that the Planning Appeals Tribunal Chairman, or Deputy Chairman, and the relevant participating Tribunal members acted in breach of procedural fairness and contrary to the rules of natural justice in respect of his/their decision to hear the Applicants' application to adduce fresh evidence pursuant to Rule 7 (4) of the Development and Planning (Appeals) Rules (1999 Revision) *in-camera* without affording the Applicants the opportunity to be heard at all in respect of its "application";
2. A declaration that the Planning Appeals Tribunal Chairman, or Deputy Chairman, and the relevant participating Tribunal members acted in breach of procedural fairness and contrary to the rules of natural justice in respect of his/their decision to allow the Second Respondent to adduce fresh evidence on behalf of and in support of the positions taken by the Second Respondent even though no application for leave to adduce such was made by the Second Respondent, thereby depriving the Applicant the opportunity to be heard on such matters;
3. A declaration that the Planning Appeals Tribunal Chairman, or Deputy Chairman, and the relevant participating Tribunal members acted in breach of procedural fairness in respect of his/their decision in making such decision(s) and to on that basis force the Applicants to proceed to a substantive hearing and to prepare written submissions in respect of a substantive hearing without the benefit of the evidence which they wished to seek leave to adduce, upon which much of the Applicants' submissions would be based, and thereby depriving the Applicants of the opportunity to assert that the Record of Appeal was glaringly deficient in ways that would prejudice the Applicants' ability to present their case;
4. A declaration that the Planning Appeals Tribunal Chairman, or Deputy Chairman, and the relevant participating Tribunal members acted irrationally in respect of their decisions as a whole, as is evidenced by the failure to provide any clear, intelligible reasons for making such decision or decisions;
5. A declaration that the Planning Appeals Tribunal Chairman, or Deputy Chairman, and the relevant participating Tribunal members acted in such a way in reaching their decision(s) and in responding to the Applicants' counsel so as to give rise the appearance of bias as against the Applicants;
6. A declaration that the Planning Appeals Tribunal Chairman, or Deputy Chairman, and the relevant participating Tribunal members acted irrationally and in breach of procedural fairness in respect of their refusal to provide the identity of the Tribunal Chairman or Deputy Chairman and the members of the Appeals Tribunal panel to the Applicants' counsel after such was

requested and the issue of the appearance of bias was raised by the Applicants' counsel, thereby depriving the Applicants any reasonable opportunity to ascertain whether there was any conflict of interest with respect of any of the PAT tribunal members;

7. A declaration that the Planning Appeals Tribunal Chairman, or Deputy Chairman, and the relevant participating Tribunal members acted with procedural impropriety in respect of their decision(s) to set the substantive Appeal down for hearing in any event until the Permanent Secretary has complied with the specific provisions of Rule 6 of the Development and Planning (Appeals) Rules (1999 Revision);
8. A declaration that the Planning Appeals Tribunal Chairman, or Deputy Chairman, and the relevant participating Tribunal members have acted in such a manner as to give rise to the appearance of bias as against the Applicants, and that such apparent bias should preclude the particular persons comprising that tribunal from hearing the substantive appeal and any procedural hearing relating thereto;
9. A declaration that pursuant to the provisions of Section 8A of the Development and Planning Law (2017 Revision), neither the Chairman, Deputy Chairman or any member of the Appeals Tribunal enjoys statutory immunity or indemnity, which is otherwise provided for the persons specified under that Section;
10. An order or orders of certiorari quashing the decision(s) of the Planning Appeals Tribunal Chairman, or Deputy Chairman and the relevant Tribunal members to refuse to convene and properly hear the Applicants on their application to adduce additional evidence and to further allow the Second Respondent to produce additional evidence without a proper hearing and without giving the Applicants an opportunity to be heard on such an application;
11. An order prohibiting the Planning Appeals Tribunal Chairman or Deputy Chairman and the relevant Appeals Tribunal members who participated in the decision(s) which are the subject of this application for Judicial Review from proceeding with the hearing of the Applicants' Appeal and on such basis to prohibit such Chairman, Deputy Chairman and members from participating in any future hearings in respect of the Applicants Appeal;
12. An interim stay of proceedings in respect of the hearing of the Appeal until the Court has determined this application for Judicial Review, or alternatively an injunction as against the Planning Appeals Tribunal from proceeding to hear the Appeal until the Court has determined this application for Judicial Review;
13. Damages as against the persons who participated in the decisions which are the subject of this application for Judicial Review on the basis that the Applicants have been deprived of their right to a fair hearing pursuant to Section 7 (1) of the Bill of Rights, Freedoms and Responsibilities of the Cayman Islands Constitutional Order 2009 and have had to bring this application for Judicial Review in order to assert and protect their Constitutional Rights.

Name and address of Applicants' attorneys:	JacksonLaw, Attorneys-at-Law P.O. Box 10638, KY1-1006, Unit 1D, Landmark Square, 64 Earth Close, Grand Cayman, Cayman Islands
Signed:  _____ JacksonLaw	Dated: 12 November, 2020

This **APPLICATION FOR LEAVE TO APPLY LEAVE FOR JUDICIAL REVIEW** is filed by JacksonLaw, Attorneys-at-Law for the Applicants herein, whose address for service is Unit 1D, Landmark Square, 64 Earth Close, George Town, Grand Cayman, samuel.jackson@jacksonlaw.ky.