

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 446 OF 2000

BETWEEN: THE PROPRIETORS, STRATA PLAN NO 103 Plaintiff

AND: (1) THE DEVELOPMENTS ADVISORY BOARD
(2) DIOS MAR LIMITED 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	The Proprietors, Strata Plan No 103 PO Box 30060 SMB Grand Cayman Cayman Islands, BWI A strata corporation
Judgment, order, decision or other proceedings in respect of which relief is sought	A recommendation by the first defendant, the Developments Advisory Board, of 2nd December, 1999, purportedly given under the provisions of sec 8 of The Development and Planning Law (1999 Revision), that planning permission be granted to the second defendant, Dios Mar Limited, with respect to a hotel and related amenities on West Bay Road adjacent to the applicant's property
<u>Relief sought</u>	
Extension of time to apply for certiorari, declaration and certiorari	
Name and address of applicant's attorneys	Broadhurst DaCosta 40 Linwood Street PO Box 2503 GT George Town, Grand Cayman, BWI
Signed:	Dated this <u>25th</u> day of May, 2000

GROUNDS ON WHICH RELIEF IS SOUGHT

The grounds on which relief is sought are the following:

1. The second defendant applied to the Central Planning Authority (“CPA” or “the Authority”) for planning permission to erect a hotel (“the hotel”) on West Bay Road, on land adjacent to the plaintiff’s property, on or about 16th November, 1998.
2. The second defendant applied to CPA, at the same time, for planning permission to build a pool on the hotel grounds.
3. The plaintiff objected in writing, on 24th November, 1998, to the grant of planning permission for the hotel and for the pool.
4. CPA granted planning permission for the hotel and the pool, subject to certain conditions, on 16th December, 1998. The plaintiff had, prior to such grant, an opportunity to be heard and was heard by CPA on that date.
5. The plaintiff appealed to the Planning Appeals Tribunal (“the Tribunal”) from CPA’s decision of 16th December, 1998.
6. The Tribunal granted the appeal on 1st December, 1999 on the ground that the second defendant’s application for planning permission (“the application”) had not been referred to the first defendant in accordance with sec 6 of The Development and Planning Law (1999 Revision) (“the Law”). The Tribunal remitted the application to the Authority “to comply with the specifications set out in the law by referring this application to the Advisory Board”.

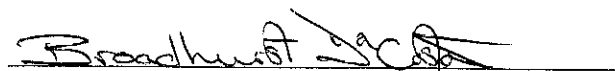
7. The application was considered by CPA again on 1st December 1999, when the Authority resolved to refer it to the first defendant.
8. The plaintiff was not given any notice that the application would be considered at CPA's meeting of 1st December, 1999 and was totally unaware of the Authority's intention to do so.
9. The first defendant considered the application on 2nd December, 1999 and recommended that the second defendant's "project be approved subject to the usual requirements".
10. The plaintiff was not informed that the first defendant would consider the application at its meeting of 2nd December, 1999 and was totally unaware of the latter's intention to do so. Moreover, the plaintiff was not advised of the first defendant's recommendation after it was given on that date.
11. CPA considered the application again on 8th December, 1999. The Authority noted that the first defendant had "heard this application on December 2, 1999 and did not express any specific concerns". It granted planning permission to the second defendant for the hotel and related amenities, subject to certain conditions ("the planning permission").
12. The Authority gave reasons for its decision of 8th December, 1999 on 12th April, 2000. Those reasons contain a statement to the effect that CPA, at that meeting, "was satisfied that the proposal was acceptable to the Development (*sic*) Advisory Board".

13. The plaintiff was not informed that CPA would consider the application at its meeting of 8th December, 1999 and was totally unaware of the Authority's intention to do so.
14. The plaintiff was advised of CPA's decision of 1st December, 1999 by a letter from the director of planning dated 22nd December, 1999 and posted on 23rd December, 1999.
15. The plaintiff was advised of the Authority's decision of 8th December, 1999 by a letter from the director of planning dated 22nd December, 1999 and posted on 23rd December, 1999.
16. The plaintiff appealed to the Tribunal from CPA's decision of 8th December, 1999. That appeal has not been heard yet.
17. The first defendant does not appear to have considered, on, or prior to, 2nd December, 1999, the matters set out in sec 8(1) and (3) of the Law in relation to the application.
18. The first defendant does not appear to have prepared a written report on the application at any time prior to CPA's meeting of 8th December, 1999.
19. The first defendant did not hold any inquiry in this matter pursuant to sec 8(7) of the Law.
20. The first defendant does not appear to have consulted with departments and agencies of Government having duties or aims or objects related to its own on, or prior to, 2nd December, 1999.

21. The plaintiff avers:

- a. That the first defendant failed in its duty to act fairly towards the plaintiff, since it did not give the plaintiff an opportunity of being heard prior to making the recommendation set out in paragraphs 9 hereof (“the recommendation”).
- b. That the recommendation is illegal, unlawful and void in that:
 - (i) The first defendant did not consider the matters set out in sec 8(1) and (3) of the Law prior to making it.
 - (ii) The first defendant did not prepare a written report on the application and, therefore, did not send any such report to the Authority prior to the grant of the planning permission by the latter.
 - (iii) The first defendant did not consult with departments and agencies of Government having duties or aims or objects related to its own prior to its recommendation of 2nd December, 1999.
- c. That this Honourable Court should extend the period of three months within which this application should have been made.

Dated this 28 day of May, 2000


Broadhurst DaCosta
Attorneys-at-law for the plaintiff

To: The Clerk of the Court

REQUEST FOR A HEARING

The plaintiff respectfully requests a hearing of its above application.

TIME ESTIMATE: The estimated time of the hearing of this application is one (1) hour.

THIS APPLICATION was filed by Broadhurst DaCosta, the attorneys-at-law for the plaintiff, whose address for service is 40 Linwood Street, PO Box 2503, George Town, Grand Cayman, Cayman Islands, British West Indies.