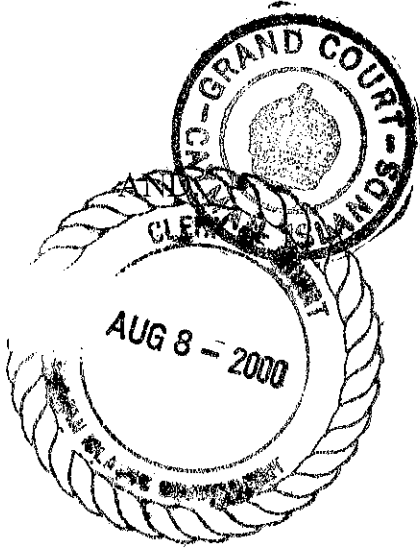


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 64 OF 2000

BETWEEN:



CAYMAN VISIONS LIMITED

Plaintiff

- (1) THE HIGHWAY AUTHORITY
- (2) THE MINISTER OF AGRICULTURE, ENVIRONMENT, COMMUNICATION AND WORKS
- (3) THE DIRECTOR OF THE DEPARTMENT OF LANDS AND SURVEY
- (4) THE CHIEF SURVEYOR
- (5) THE REGISTRAR OF LANDS


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(s)	Cayman Visions Limited P.O. Box 30361 SMB, Grand Cayman
Judgment, order, decision or other proceeding in respect of which relief is sought	<ol style="list-style-type: none"><li>1. The Decision made by the First Respondent dated 15<sup>th</sup> October 1996 to make a declaration under section 5 of the Roads law (Revised) purporting to add to the schedule of public roads a purported road over the Plaintiff's land known as parcel 223, Block 57E in the North Side Registration section.</li><li>2. The Decision made by the Second Respondent in 1996 to take and to instruct the Department of Lands and Survey to proceed with preparation of plans for the taking of the Plaintiff's said land as a road.</li><li>3. The Decisions of the Third Defendant in 1996 to (a) purport to act as the Highway Authority or (b) prepare</li></ol>

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	<p>the plans for taking the Plaintiff's said land by preparing a prescribed composite map and documentation necessary for a section 5 declaration under the Roads Law (Revised) and advising the Highway Authority to proceed to make such a declaration.</p> <p>4. The Decision of the Chief Surveyor made in or about May 2000 to request of the Fifth Defendant immediate mutation of the Registry Map and cancellation of the Plaintiff's said parcel 223, Block 57E.</p> <p>5. The Decision of the Fifth Defendant in or about May 2000 to alter the Registry's maps and cancel the Plaintiff's said parcel 223, Block 57E.</p>
<p style="text-align: center;">Relief Sought: Judicial review in the form of:</p> <ol style="list-style-type: none"> <li>1. An Order of Certiorari to remove into the Grand Court and to quash the said decisions.</li> <li>2. An Order of Mandamus to oblige the Fifth Respondent to re-open the Land Register for the said Parcel 223, Block 57E in the North Side Registration section with the name of the Plaintiff recorded as the registered proprietor thereof.</li> <li>3. Such further or other relief as the Court may determine is just.</li> <li>4. Costs.</li> </ol>	
<p>Name and address of applicant's attorneys, or if no attorneys acting, the address for service of the applicant</p>	<p>Boxalls, Attorneys-at-Law PO Box 1234 GT 3<sup>rd</sup> Floor, Queensgate House South Church Street, George Town Grand Cayman</p>
<p>Signed </p>	<p>Dated 7<sup>th</sup> August 2000</p>

#### GROUNDS ON WHICH RELIEF IS SOUGHT

##### The Facts

1. The facts are set out in the affidavit of Michael Kornegay sworn in support of this application.

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### The Law

2. The relevant law is set out in sections 1-10 of the Roads Law (2000 Revision):
  - (a) Under section 2 “Governor”, “Highway Authority” and “road” are defined.
  - (b) Under section 3 provisions are set out for the Highway Authority to make and gazette a section 3 declaration to give notification of a proposal by the Highway Authority to take land for a proposed new road.
  - (c) Under section 4 provisions are set out giving a power to enter land to survey for proposed new public roads.
  - (d) Under section 5 the Highway Authority is given power to classify and publish schedules of existing roads which have been declared to be public roads.
  - (e) Under section 6 the Highway Authority is given the power to take land for a proposed new road IF there has been a section 3 declaration published.
  - (f) Under sections 8 & 9 compensation for land taken may be claimed if the claim is made within 90 days of the section 3 declaration and in any event not later than one year after the section 5 declaration.
  
3. In this case the Government purports to have taken the Plaintiff’s land but no section 3 declaration that the Plaintiff can locate was ever made or published. Therefore neither the Plaintiff, nor other ministries and departments nor the Registrar of Lands nor the public inspecting the Land Register knew of the purported taking. Further if the taking were valid any application for compensation was barred by section 9(2) on 15<sup>th</sup> October 1997 even though the time for seeking compensation under section 9(1) never commenced and the right to seek compensation under section 8(1) never existed because there never was a section 3 declaration.

### The Grounds

4. It is contended that the First Defendant erred in law in making the section 5 declaration under the Roads Law (revised) on 15<sup>th</sup> October 1996. By section 5 the Highway Authority may cause any road to be classified and scheduled as a

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public road (section 5(1)(a)) and to Gazette such schedules (section 5(1)(b)). However there must be a road before a section 5 declaration classifies and schedules it as a public road. At no time has there been a road on the Plaintiff's parcel 223, Block 57E in the North Side Registration section. The First Defendant accordingly had no power to make the section 5 declaration and erred in law in so doing.

5. By the letter of 26<sup>th</sup> May 2000 the Chief Surveyor explained to the Plaintiff that:

*"In 1996 our Ministry of A,E,C & W, at that time responsible for the gazettment of land for road, instructed us [Lands & Survey Department] to proceed with preparation of plans for the taking of parcel 57E/223 as road."*

It is contended that the Second Defendant erred in law in deciding to take, and further erred in law in directing the Third Defendant's department to proceed to take, the Plaintiff's land as neither had any power to take land under the Roads Law. Under the Roads Law section 5(1) the Governor is the Highway Authority and only the Governor as Highway Authority has any power (under sections 3 and 6) to take land in the Islands for roads. By his replies dated 8<sup>th</sup> October 1999 to the Requests for Further and Better Particulars in Grand Court Cause No. 498 [exhibit MK-3] the Attorney General has confirmed that

*"The Governor in Council has not assigned or delegated any of its functions as Highway Authority (and a fortiori any of its powers) to officers of the Lands and Survey Department [reply 2] . . . [neither] the Lands and Survey Department [nor] any of its officers has any authority to act on behalf of the "Highway Authority" ... [reply 3].*

6. It is contended in the premises aforesaid that the Third Defendant erred in law in purporting to act as the Highway Authority and, even had it been the Highway Authority, further erred in law in preparing the flawed plans to make a section 5 declaration as a purported means of taking the Plaintiff's land when a section 3 declaration by the Highway Authority was the only legal preliminary step to permit lawful taking under section 6 of the Plaintiff's land for a road.

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7. If which is denied the First Defendant was able to “take” the Plaintiff’s land by way of the said section 5 declaration made 15<sup>th</sup> October 1996 then adopting such process and failing to inform the Plaintiff, or allow it to be heard, or to offer it compensation or the opportunity to apply for same under the Roads Law were further errors of law, breaches of the rules of natural justice and such unreasonable decisions that no decision maker properly directing itself could have ever possibly made them and they are accordingly nullities and must be quashed.
8. It is contended that the decision of the Fourth Defendant, in reply to a request for information from the Plaintiff, to unilaterally instruct the Fifth Defendant to alter the Registry Maps and cancel the Plaintiff’s parcel of land was illegal as apparently founded upon the aforesaid illegal/ineffectual purported taking of the land by way of the said section 5 declaration. Further the manner of the said instruction to the Fifth Defendant was capriciously high handed and in breach of the rules of natural justice having not afforded the Plaintiff any opportunity of being heard prior to an act which purported to extinguish without legal compensation its rights of property in the parcel so cancelled.
9. It is contended that the action of the Fifth Defendant in following the instruction of the Fourth Defendant and thereby canceling the Plaintiff’s said parcel from the Register was illegal in the premises aforesaid and ought to be quashed and the Fifth Defendant ordered to re-instate the Plaintiff in its property rights as if the illegal cancellation of its parcel 223 had never been carried through.

Dated this 7<sup>th</sup> August 2000



BOXALLS

THIS APPLICATION is made by Boxalls, Attorneys-at-Law for the Plaintiff, whose address for service is that of his said attorneys: PO Box 1234GT, 3<sup>rd</sup> Floor, Queensgate House, South Church Street, George Town, Grand Cayman, British West Indies (Reference: 1357-005/JCC).