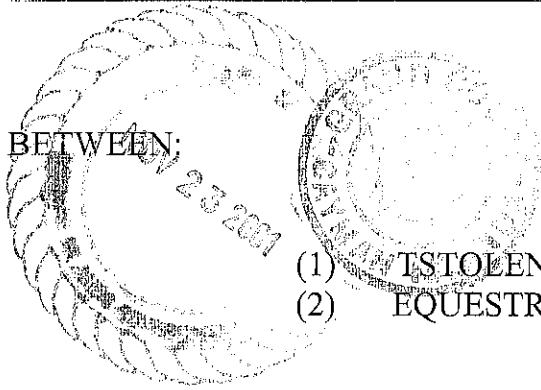




**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

CAUSE NO. 73<sup>2</sup> OF 2001

BETWEEN:



- (1) TSTOLEN TYME HOLDINGS LTD.
- (2) EQUESTRIAN CENTRE OF CAYMAN LTD.

Applicants

AND:


- (1) THE MINISTRY OF PLANNING, COMMUNICATION, WORKS & INFORMATION TECHNOLOGY
- (2) THE GOVERNOR IN COUNCIL
- (3) THE HIGHWAY AUTHORITY
- (4) THE CHIEF ENGINEER OF THE PUBLIC WORKS DEPARTMENT

Respondents

**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 Applicants	<p><b>Tstolen Tyme Holdings Ltd.</b> – A Company incorporated under the Companies Law of the Cayman Islands which is the registered owner of Block 14D, Parcels 239 and 240 and has an address of P.O. Box 493GT Grand Cayman</p> <p><b>Equestrian Centre of Cayman Ltd.</b> – A Company incorporated under the Companies Law of the Cayman Islands, carries on the business of a Riding School and Boarding Stables on Block 14D Parcels 239/240 and has an address of P.O. Box P.O. Box 2158 GT, Grand Cayman</p>

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Judgment, order, decision or other proceeding in respect of which relief is sought	The decision of the Minister of Planning, Communications, Works and Information Technology and/or the Governor in Council and/or the Highway Authority contained in the letter of November 15, 2001 to the first named applicant to the effect that the proposed Crewe Road By-Pass should be aligned to pass through Block 14D Parcels 239 and 240 in the matter shown on Boundary Plan 407 and which decision was communicated to the applicants on 15 <sup>th</sup> November 2001.
Relief Sought:	
<ol style="list-style-type: none"> <li>1. An Order of Certiorari to remove into this Honourable Court and to quash the decision of the Honourable Minister and/or of the Governor in Council and/or of the Highway Authority and/or of the Public Works Department to take 0.06 acres from Parcel 239 and 0.81 acres of land from Parcel 240 and to align the proposed Crewe Road By-pass through Parcels 239 and 240 as shown in Boundary Plan 407.</li> <li>2. An Order for Mandamus directed to the Respondents requiring them to reconsider their decision according to the Law and to provide for the proposed highway to be aligned in such a way as not to pass through Block 14D Parcels 239 and 240 in such a manner as to deprive those two Parcels of 0.06 and 0.81 acres of land respectively.</li> <li>3. Interim Relief in the form of an Injunction pending the determination of this application by the Plaintiffs for Judicial Review, restraining the Public Works Department and/or any servant or agent of that department or the Respondents or any one of them from entering onto Block 14D parcels 239 and 240 for the purpose of carrying out any works thereon, or from doing any work on the by-pass which would affect the said Parcels and the use thereof by the Applicants, until these proceedings for Judicial Review are heard and determined by this Honourable Court.</li> <li>4. Costs of and incident to these proceedings.</li> <li>5. Such further or other relief as the Court may determine is just.</li> </ol>	
Name and address of applicants' attorneys	Boxalls, Attorneys-at-Law PO Box 1234 GT 3 <sup>rd</sup> Floor, Queensgate House South Church Street, George Town Grand Cayman
Signed 	Dated: November 23, 2001

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### **GROUND ON WHICH RELIEF IS SOUGHT**

#### **The Facts**

The factual background to this application for leave to apply for Judicial Review is contained within the affidavit of Roy M. McTaggart that has been filed with this application and this affidavit will be relied on in support of the application on the following grounds:

#### **The Grounds**

1. The decision contained in the letter of the 15<sup>th</sup> of November 2001 to the effect that the proposed Crewe Road by-pass should be aligned to pass through Block 14D Parcels 239 and 240 is unreasonable, irrational and illogical inter-alia for the following reasons:
  - (a) The alignment of the said by-pass in the manner shown on Boundary Plan 407 will have the effect of completely destroying and bringing to an end a useful and desirable activity namely a Riding School and Boarding facilities for horses that offers tuition and health recreation for over 75 children between the ages of 7 and 18 that has been carried on and established on the said Parcels of land 239 and 240 since January 1993.
  - (b) That the destruction of the Riding School can be avoided if the proposed roadway is aligned (as it easily can be) to pass south of Parcels 239 and 240 over land that is vacant and is not and never has been used for any purpose.
  - (c) That in or about the 1990 or 1991 the owners of Parcels 239 and 240 met with The Honourable Linford Pierson who was at the time the Minister of Communications and Works and were assured by him that the proposed roadway which was then in the concept stage would not be aligned so as to cross over Parcels 239 and 240.
  - (d) That on the strength of this assurance and in reliance on it, considerable sums of money were spent between 1992 and the present time in developing the land with the proper facilities for an Equestrian Centre for the Cayman Islands and the business built up and expanded.

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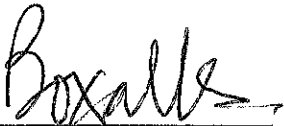
- (e) That the assurance given by the said Minister to the effect that the proposed by-pass would be aligned in such a manner as not to affect Parcels 239 and 240 gave to the applicants a legitimate expectation amounting to a substantive right that the said by-pass roadway would not be aligned so as to pass through the said 2 Parcels of land and the applicants by the decision contained in the letter of the 15<sup>th</sup> of November 2001 have been wrongly and unlawfully deprived of that expectation.
- (f) That in March 1999 when Boundary Plan 374 was gazetted the proposed alignment of the said by-pass road did not pass through Parcels 239 and 240 or affected them or the business carried on therein in any way.
- (g) That the alignment of the said proposed by-pass as shown on Boundary Plan 374 was unreasonably ordered to be altered by then Minister of Communications and Works Mr. John McLean and in December 2000 Boundary Plan 407 was gazetted showing the alignment through Parcels 239/240.
- (h) That there is no need for the alignment of the proposed roadway to pass through Parcels 239/240 because either the alignment shown on Boundary Plan 374 or an alignment to the north of the alignment of Boundary Plan 374 over unused and undeveloped land and not affecting Parcels 239/240 would be an effective and viable option for the alignment of the proposed roadway and one which would not have the effect of destroying and bringing to an end the activity and business carried out on Parcels 239/240.
- (i) That better and more viable options for the alignment of the proposed roadway in a manner so as not to affect Parcels 239 and 240 are available to the Respondents but they unreasonably refuse to give effect to such options.
- (j) That the decision to align the proposed roadway in the manner shown on Boundary Plan 407 and not South of Parcels 239 and 240 in a manner that is feasible and would not affect Parcels 239 and 240 thereby destroying the activity being carried thereon, is a decision which is so outrageous in its defiance of logic or accepted moral standards that no reasonable person who had applied his mind to the question to be decided could have arrived at it.
- (k) That the land amounting to 0.06 acres of Parcel 239 and 0.81 acres of Parcel 240 (totaling 0.87 acres) is not needed for the layout of the new public road, and the decision that it is so needed, and that such land should be taken from Parcels 239 and 240 respectively, for the purposes of aligning the said roadway, is unjustifiable, unreasonable, and irrational and should be set aside.

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2. That in all the circumstances the decision contained in the letter of the 15<sup>th</sup> of November is oppressive, unjust and unfair in that it subjects the applicants to an excessive hardship or to an un-necessarily onerous infringement of their rights and interest.
3. That the objective of providing a by-pass road can be achieved by a less harmful means than by aligning it through Parcels 239 and 240 and the Respondents failure to adopt the least harmful way of achieving its objective infringes the principle of proportionality in that the applicants are being required to bear a burden that is out of proportion and demonstrates a manifest imbalance of relevant considerations on the part of the Respondents.

The applicants request an oral hearing for leave to apply for Judicial Review in view of the interim relief sought and the importance of this matter which could lead to the total destruction of an existing facility and business which is of a sensitive nature.

Dated this 23<sup>rd</sup> day of November, 2001



**BOXALLS**

Attorneys for the Applicants

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: 2015-0001/JCC)