

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 613 OF 2003

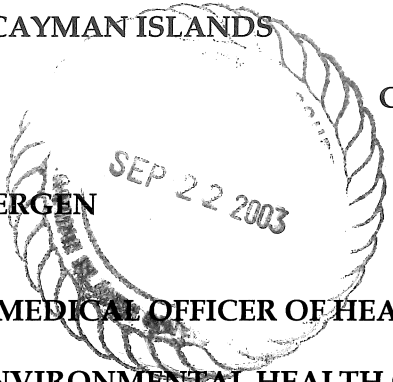
BETWEEN: ERIC VON TIERGEN

PLAINTIFF

AND: THE SENIOR MEDICAL OFFICER OF HEALTH

THE CHIEF ENVIRONMENTAL HEALTH OFFICER

THE ATTORNEY GENERAL



EX-PARTE 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	Eric Von Tiergen PO Box 10664 APO Grand Cayman
Judgment, order, decision or other proceeding in respect of which relief is sought	
<u>Relief Sought</u>	
<ol style="list-style-type: none"> 1. An Order of mandamus by this Honourable Court requiring the Senior Medical Officer of Health to inspect land situate at Block 1C, Parcel 23 and Block 1C, Parcel 26 West Bay in compliance with his statutory duty pursuant to section 6(1) Public Health Law (2002 Revision). 2. An order of mandamus by this Honourable Court requiring the Chief Environmental Health Officer to take such steps as are necessary to remove or secure the abatement of the statutory nuisance on Block 1C, Parcel 26 West Bay in compliance with his statutory obligation pursuant to section 6(2) Public Health Law (2002 Revision). 3. Damages against the Senior Medical Officer of Health for breach of statutory duty and/or misfeasance in public office. 4. Damages against the Chief Environmental Health Officer for breach of statutory duty and/or misfeasance in public office. 5. Costs. 	

Name and address of Applicant's attorney, or, if no attorneys acting, the address for service of the applicant.	Quin & Hampson Attorneys-at-Law 3rd Floor, Harbour Centre, P.O. Box 1348 GT, Grand Cayman.
Signed: <u>Quin + Hampson</u> Quin & Hampson	Dated: 22nd September, 2003

GROUND ON WHICH RELIEF IS SOUGHT

The factual background to this application for leave to apply for judicial review is contained in the affidavit of Mr Eric Von Tiergen and the exhibits thereto which is filed with this application and in support of it and this affidavit will be relied upon in support of the application on the following grounds:

1. That Part III of the Public Health Law (2002 Revision) ("the legislation") sets out a statutory scheme for the inspection, identification, removal and abatement of statutory nuisances in the Islands.
2. That section 6(1) of the legislation mandates the Senior Medical Officer of Health to "cause the Islands to be inspected from time to time for the detection of matters requiring to be dealt with under this part as being statutory nuisances with section 7 of the legislation."
3. That section 6(2) of the legislation mandates the Chief Environmental Health Officer to take such steps as are necessary to remove or secure the abatement of all statutory nuisances.
4. That human waste and effluent is flowing from an open pipe on land situate at Block 1C, Parcel 23 onto land situate at Block 1C, Parcel 26 West Bay.
5. That the Applicant is the owner of Block 1C, Parcel 26, WB.
6. That the Department of Environmental has been notified in writing of the existence of such a nuisance on numerous occasions.
7. That the facts contained within paragraph 4 above constitute a statutory nuisance within the terms of section 7(1) (h) and/or (g) of the legislation.
8. That the Senior Medical Officer of Health is obliged by the legislation to inspect such a statutory nuisance.
9. That the Chief Environmental Health Officer is obliged by the legislation to takes steps to remove or secure the abatement of the statutory nuisance.
10. That the Senior Medical Officer of Health's failure to comply with his statutory duty is unlawful.
11. Alternatively, that the Senior Medical Officer of Health's decision not to act is unreasonable.
13. That the Chief Environmental Health Officer's failure to comply with his statutory duty is unlawful.
14. Alternatively, that the Chief Environmental Health Officer's decision not to act is unreasonable.

15. That the Applicant has suffered loss and damage as a result of the Senior Medical Officer of Health's failure to comply with his obligation.
16. That the Applicant has suffered loss and damage as a result of the Chief Environmental Health Officer's failure to comply with his obligation