

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ¹⁸⁶ OF 2009



BETWEEN: **DIAMOND LAW ASSOCIATES** **PLAINTIFF (1)**
SCOTT WILSON **PLAINTIFF (2)**



AND: **THE WORK PERMIT BOARD** **FIRST DEFENDANT**
THE IMMIGRATION APPEALS TRIBUNAL
SECOND DEFENDANT

EX PARTE APPLICATION FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW
(GCR O.53, r.3)

To the Clerk of the Court, Law Courts, George Town, Cayman Islands	
Name, address and description of applicant	(1) DIAMOND LAW ASSOCIATES of 4th Floor, Cardinal Plaza, Cardinal Avenue, PO Box 2887 GT, Grand Cayman, Cayman Islands; And (2) SCOTT WILSON, of 4th Floor, Cardinal Plaza, Cardinal Avenue, PO Box 2887 GT, Grand Cayman, Cayman Islands

Judgement, order, decision or other proceeding in respect of which relief is sought

DECISIONS/ACTIONS OF FIRST DEFENDANT

(1) The decision of the First Defendant made on or about the 11th March 2009 to revoke, amend or otherwise change its decision in respect of the renewal of the grant of a work permit; such previous decision having been made on or before 10 March 2009 renewing the Plaintiff's (2) work permit until October 2010.

(2) The decision of the First Defendant on or about 11th March 2009 to grant a "final" work permit to the Plaintiff (1) in respect of the Plaintiff (2), communicated to the Plaintiff (1) by letter dated 24th March 2009 and received in the post on 7th April 2009, such permit being granted from the 1st October 2008 expiring 16th April 2009.

DECISIONS OF SECOND DEFENDANT

(1) The decision and subsequent actions of the Second Defendant and/or its secretary and/or agent made on the 15th April 2009 refusing

to accept service or delivery of a written Notice of Appeal addressed to the Second Defendant in respect of the decision of the First Defendant;

Relief Sought

AS AGAINST THE FIRST DEFENDANT

1. An Order of *Certiorai* to quash the decision of the First Defendant (1) to revoke any grant or purported grant of a work permit from 1st October 2008 until 1st October 2010.
2. An Order of *Certiorai* to quash the decision of the First Defendant to grant a final work permit from 1st October 2008 until 16th April 2009.
3. A Declaration that the aforesaid grant of a final work permit was unlawful or unreasonable.
4. An Order that any time limit imposed by section 49(1) of the Immigration Law (2007 Revision) for the application for key employee status be extended until the outcome of this hearing and permitted in the event that the Court determines that the grant of a final work permit was lawful.
5. An Order permitting the Plaintiff to continue to work by operation of law until the determination of this application and any subsequent review proceedings if leave is granted to bring the same.

AS AGAINST THE SECOND DEFENDANT (AND IN THE ALTERNATIVE)

1. An Order of *Mandamus* requiring the Second Defendant to accept service of the Notice of Appeal and to carry out its function as an appellate body according to the requirements of sections 15, 16 and 17 of the Immigration Law (2007 Revision).

2. A Declaration that the aforesaid refusal to accept service of the Notice of Appeal was unlawful or unreasonable.


3. An Order that the Second Defendant allow the Plaintiffs reasonable time to lodge an application under section 49(1) of the Immigration Law (2007 Revision) in the event that any appeal it is ordered to hear is unsuccessful in relation to the issue of the First Defendant's power to grant a final work permit and that any such application be treated as if it had been made prior to the expiry of the final work permit.

AS AGAINST ALL DEFENDANTS

1. Further and/or other relief; and
2. Costs

DIAMOND LAW ASSOCIATES
4TH FLOOR, CARDINAL PLAZA,
CARDINALL AVENUE, PO BOX 2887 GT,
GRAND CAYMAN, CAYMAN ISLANDS,
TEL: 769-9352, FAX: 769-4352, E-MAIL:
INFO@DLA.KY, (REF DLA/SW). CAYMAN
ISLANDS

Signed:



Dated: 16th April 2009

GROUND ON WHICH RELIEF IS SOUGHT

The Plaintiffs rely on the following grounds:

A. AS AGAINST THE FIRST DEFENDANT

1. **Illegality:** That the decisions of the First Defendant was contrary to section 52(1) of the Immigration Law (2007 Revision) and the definition of “term limit” therein.
2. **Illegality / Abuse of process / Procedural unfairness:** That at all times prior to the communication of the 24th March 2009, the Work Permit Board had stated in correspondence that the Second Plaintiff’s term limit was 7 April 2013 and that it had in fact granted a renewal of the work permit to commence on the 1st October 2008 and expiring on the 1st October 2010, to be automatically renewed on 1st October 2009 upon payment of the fee and as evidenced by the stamping of the Second Plaintiff’s passport to that effect;
3. **Legitimate Expectation:** That in stating to the first and second Plaintiffs in correspondence and at all times prior to the delivery of the 24th March 2009 letter (re: the grant of a “final” work permit) that the second Plaintiff’s term limit was 7 April 2013, the First defendant created a legitimate expectation that the term limit was as stated and that the effect of the Law was to allow the second Plaintiff’s work permit to be renewed up to that date;
4. **Unreasonableness and/or irrationality:** The decision of the First Defendant to revoke the grant of a work permit and to grant a final work permit was unreasonable and/or irrational in the circumstances;

5. **Unreasonableness and/or Procedurally Unfair:** The decision of the First Defendant to inform the Plaintiff's of its decision giving only 4 working days for any appeal or a other proceedings to be taken is unreasonable and or unfair in the circumstances;
6. **Failure to give adequate reasons for the decision:** The First Defendant failed to give the Plaintiffs any or any full and detailed reasons for the decision to revoke the previous grant of a work permit until 1st October 2010 other than to restate the provisions of section 52 of the Immigration Law;

B. AS AGAINST THE SECOND DEFENDANT

1. **Illegality:** The decision of the Second Defendant was not made in accordance with section 15 of the Immigration Law (2007 Revision) and is therefore illegal and made ultra vires;
2. **Procedural unfairness:** The Second Defendant acted with procedural unfairness by refusing service or delivery of the Notice of Appeal and failed to carry out its duty as provided for in the Immigration Law;
3. **Procedural unfairness:** The Second defendant, through its servant or agent Ms Hilmae Bodden, acted with Procedural unfairness by one or more of the following: (a) Refusing to take delivery of the Notice of Appeal; (b) taking delivery of the Notice of Appeal and subsequently making a decision as to its legality or the Appellant's grounds for lodging such a Notice of Appeal; (c) taking legal or any other advice from a source undisclosed but stated as not being the Chairman or a Deputy Chairperson of the Immigration Appeal Tribunal so as to come to a decision in respect of the grounds for lodging such appeal; and (d) sending the Notice of Appeal to the Appellants and

refusing to acknowledge that it had been lodged in the appropriate manner and at the appropriate time.

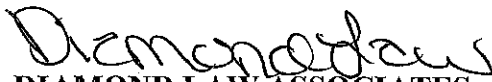
4. **Unreasonableness and/or irrationality:** The decision of the Second Defendant to refuse service of the Notice of Appeal.

C. OTHER AND FURTHER GROUNDS AND ORDERS

1. **GCR Order 53, Rule 4(1) – Time Limit for Application**

The application is made at the earliest opportunity and within the time limits imposed by GCR Order 53, Rule 4(1).

2. The Plaintiff will further rely on the Affidavit of the Plaintiff sworn herein as providing further and other grounds upon which Relief is sought and will apply to or will amend the Notice of Motion in due course as permitted by GCR Order 53, rule 6(2), if necessary, required or ordered by the Court.
3. The Plaintiff makes application for an Order permitting the Second Plaintiff to engage in gainful employment on the same terms and conditions of his previous work permit pending hearing of the matter and injuncting the First Defendant, its servants or agents from arresting, disturbing or otherwise preventing the Second Defendant to carry out such gainful occupation within the Islands and removing the Second Defendant from the Islands until further Order of the Court or pending hearing of the matter, whichever is sooner.


DIAMOND LAW ASSOCIATES
Attorneys for the Plaintiffs
16th April 2009.