SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE

(Civil)

No: 1102 of 1998

Between:

AMERICAN DRYWALL BUILDING CENTRE LIMITED

- Appellant

vs

DEVELOPMENT CONTROL AUTHORITY

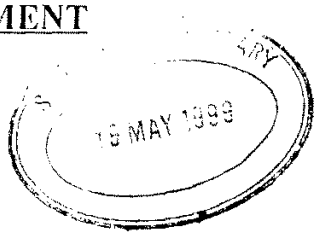
- Respondent

Appearances:

Mr. D. Theodore for the Appellant
Mrs. C. Hinkson – Ouhla for the Respondent

1999: April 15th
May 5th & 19th

JUDGMENT



d'Auvergne J.

The Appellant being dissatisfied with an Enforcement Notice served on its Managing Director filed a Notice of Appeal on the 27th day of November, 1998 in the High Court.

The Grounds of Appeal are as follows:

1. The date stated in the enforcement notice for the intended demolition is less than one month after the service of such enforcement notice on November 4, 1998, contrary to Section 7A(2) of the Land Development (Interim Control) Act as amended (the Act).

2. The display of an advertisement is not a "development" within the meaning of the Act.

3. The enforcement notice was served in breach of the rules of natural justice in that the decision to demolish was made without the Appellant having been first given an opportunity, as contemplated by Section 7(3) of the Act, to be heard on the question whether the Respondent would, or would not, have granted permission for the display of the advertisement.

4. The enforcement notice does not, contrary to Section 7A(1) of the Act specify adequately, or at all, the grounds upon which the demolition is proposed to be undertaken.

5. There has been no proper service of the enforcement notice on the Appellant, service being effected on its Managing Director personally, and not on the Appellant's secretary or clerk as required by Section 23 of the Interpretation Act, No. 18 of 1968.

6. The Act does not provide the sanction of demolition for the display of an advertisement, per se.

7. The Act does not provide the sanction of demolition for any injury to the amenity of any area, per se.

8. In any event the erection of an advertisement "along the vertical alignment of the main Canaries/Soufriere Road at Canaries does not constitute, and is incapable of constituting, an injury to the amenity of the area whether by reason of any ruinous, unsafe or dilapidated condition of any building or by unsafe or dilapidated condition of any building or by the deposit of refuse, spoil or derelict vehicles or by an occupation for the purpose of the repair of vehicles.

9. The enforcement notice is defective on its face as (a) it does not indicate the date of service of the said notice, and (b) it does not indicate to whom it is directed and (c) it identifies as owner of the sign to be demolished an entity which does not exist.

The Enforcement Notice number 111 reads as follows:

"TAKE NOTICE that the above-mentioned Authority under the provisions of the Land Development (Interim Control) Act No. 8 of 1971 as amended by the Land Development (Interim Control)(Amendment) Act No. 8 of 1984, intends to demolish a sign owned by *American Drywall Company c/o William Charles* and situated at *Canaries*.

WHEREFORE you are hereby given notice of the demolition of the said *Bill Board* on the *30th* day of *November 1998*.

The grounds for the above action(s) are as follows:-

You have constructed a Bill Board along The vertical aligment of the Main Canaries/Soufriere Road at Canaries.

This Action in Contravention to Section 20 Section 19 and Section 7(1) of the Land Development Act 1971.

You are entitled to appeal to a Judge by notice in writing within twenty-eight (28) days from the date on which the above Notice has been served on you"

And the Bill Board reads:

AMERICAN DRYWALL
100% Satisfaction Guaranteed **ST. LUCIA**
Simply Beautiful

The appeal was fixed for trial on the 15th day of April, 1999 and was heard on that day.

At the trial the Managing Director, William Charles, the Operations and Personnel Officer Anselm Clauzel and the Personnel Secretary to the Managing Director, Glenda James gave evidence on behalf of the Appellant while Timothy Mangal a Building Officer of the Respondent with responsibility for the areas Soufriere, Choiseul and Canaries, Fergus Gilbert another Building Officer and Delia Didier Nicholas, the Development Control Officer of the Respondent all gave evidence on behalf of the Respondent.

William Charles said that "it was the 4th day of November, 1998 in the afternoon" that Timothy Mangal along with Fergus Gilbert came into his office and served him "Enforcement Notice No. 111" (noted earlier) which stated the Respondent's intention to demolish a bill board owned by American Drywall Company constructed "along the Vertical alignment of the Main Canaries/Soufriere road at Canaries"; that he immediately gave his secretary specific instructions to fax the said Notice to the Appellant's solicitors and he was aware that she did so.

He assured the Court that the said notice was served in a pleasant atmosphere and that it was the 4th day of November, 1998 and not the 28th day of October, 1998 as alleged by the Respondent.

Glenda James calmly identified "Enforcement Notice No. 111" as the fax she sent to the Appellant's solicitor, Mr. Dexter Theodore, on the 5th day of

November, 1998 at 8:47 a.m. She also said that she affixed a cover note to the said notice which she signed. She identified the cover note as page one (1) of her fax.

Once again this witness assured the Court that the serving of the notice did not take place on the 28th day of October, 1998 but "after 2:00 p.m. on the 4th day of November, 1998."

Anselm Clauzel told the Court that he first saw the Enforcement Order on the 4th day of November, 1998 and he noted that though it had a signature there was no date of serving stated on it. He identified the notice and described what the bill board (hereinafter called the sign) but said that he did not know whether the said sign was erected by the Appellant.

Timothy Mangal told the Court that at approximately 2:00 p.m. on the 27th day of October, 1998 during his normal motoring exercise at Canaries he observed a construction of a sign along the vertical alignment of the Canaries/Soufriere Main road, that the sign measured approximately 40 feet in height and 80 feet wide and is elevated 20 feet above road level.

He described the sign as being made up of "Cement and Sand motor squid embedded or plastered against a surface of the earth. On top of this cement and sand motor squid is a placement of 2 x 2 squared ceramic tiles. It is in three colours, blue at the perimeter of the sign, white forming the body of the sign background and the words and letters are placed in red tiles."

He said that the following day, "Wednesday 28th day of October, 1998 at 9:30 a.m. he went to the American Drywall Store where he met the Managing Director who acknowledged responsibility for the construction of the "sign", that he drafted and served the said Enforcement Notice No. 111 on Mr. Charles at his office.

He agreed that he wrote every handwritten letter on the Enforcement Notice and signed his name. He acknowledged both signatures as being his and admitted that "I made a mistake when I wrote American Drywall" "I know that the definition of "Development" has been amended. I did not put it down because it slipped me. I did not do it purposely." He also admitted that he placed his signature above the words Executive Secretary without stating that it was on the Executive Secretary's behalf. He said that he did not discuss with the Managing Director the possibility of permission being granted to him to retain the said "sign" since the meeting was a "hostile" one and was unsure whether he would be able to return to the office. He further admitted that the omitting of the date "was an oversight."

The balance of the cross examination was a discourse as to the meaning of the various sections of the (Land Development (Interim) Control Act 1971) as amended which the Appellant was alleged to have breached.

Mr. Mangal told the Court that in his opinion as a Building Officer of the Respondent "the bill board or sign is a deposit of refuse ...(a distraction to the motorist)."

Fergus Gilbert said that he accompanied Timothy Mangal to the Appellant at about 8:30 to 9:00 a.m. on the 28th day of October, 1998 to serve the said Enforcement Notice. Unlike Mr. Mangal he said that it was a friendly visit and that he recalled "seeing Glenda James on the day in question." He exhibited a page from his diary to verify his statements.

Debra Didier Nicholas assured the Court that on the 27th day of October, 1998 she instructed Fergus Gilbert to accompany Timothy Mangal to the Appellant for the serving of the notice.

She said that she saw a report concerning the serving of the notice "around the 28th of October, 1998 before the 4th of November, 1998." She acknowledged her signature and said "For Action" and the date viz 28/10/98 were placed on the exhibit by her to confirm that she had received the report on that day and that it was an active file.

She concluded her evidence by saying that "it is not possible that it could have been received by me after that date."

ARGUMENTS

Learned Counsel for the Appellant commenced his arguments by urging the Court to adopt an analytical approach to the meaning of the word "development" which includes building operations (Section 2 of the Land Development (Interim Control) Act No. 8 of 1971).

He said that while it was true that the sign in question was constructed of cement sand (mortar) and tiles on a rock face, it was not a development within the meaning of the said Act since certain classes of development were permitted and could be undertaken without the permission of the Development Control Authority and submitted that the erecting of a sign did not require prior permission (Section 9 of the Land Development (Interim Control) Act No. 8 of 1971 and Section 22 of the Land Development (Interim Control)(Amendment) Act No. 11 of 1990).

Learned Counsel contended that the Principal Act as amended by No. 11 of 1990 clearly states that an advertisement could only be displayed with prior permission of the Authority and that a breach could only amount to the instituting of an action in the District Court against the offender who if found guilty would be punished by an imposition of a fine.

Learned Counsel said that by Section 3 of the Land Development (Interim Control)(Amendment) Act a new Subsection 7A was inserted which requires the Authority to state in its Enforcement Notice the nature of the action which the Authority proposes to take and the grounds upon which it proposes to take such action; that the Enforcement Notice charged the Appellant with constructing the sign in contravention of Section 7(1) of the Act, which he argued, created a false impression that the construction of the sign required prior Development Control approval. He quoted the case of **Francis vs Yiewsley and West Drayton Urban District Council 1957 3ALLER page 529.**

In that case the Court of Appeal in England declared invalid an Enforcement Notice which falsely stated that a development was carried out without planning permission. Counsel argued that the assertion was the same since implicit in the terms of the notice filed on the Appellant was that a development was carried out without planning approval.

He further argued that Section 7(A)(1) makes it mandatory for the Authority before demolishing to serve notice on both the owner and occupier and in that instance notice was not served on the owner and quoted the case of **Caravans and Automobiles Ltd vs Southall Borough Council 1963 ALLER page 533** which confirms that notice on the occupier alone was insufficient. He contented that the rules of Natural Justice were breached since the developer did not have the opportunity to be heard on the question of whether or not he would or would not have been given permission to build.

He also argued that there was no proper service on the Appellant, a body corporate. He said that service should have been on the clerk to the body or association or sent by post to the secretary. He concluded by contending that the date of service must be established.

Learned Counsel for the Respondent submitted that the Appellant's "development" was not an exception under the First Schedule of the Act which provides "Buildings not used for human habitation and other works on agricultural holdings not including partition and subdivision of land solely for agricultural purposes. She argued that before a building can be considered as an exception there must be the two pre-requisites (1) that the

building must be one not used for human habitation and (2) must be an agricultural holding; that no evidence had been led to demonstrate that the sign was erected on agricultural holdings. She stressed that the burden of proof was on the Appellant to show that it had not breached the rules and regulations of the Planning Control Authority.

She said that the Appellant had breached the planning requirements by (1) displaying an advertisement without the written permission of the Authority Section 20 of the Act; (2) by injuring the amenity of the area through the occupation of the land Section 19(1) of the Act; and (3) by failing to obtain the written permission of the Authority before carrying out a "development" Section 7(1) of the Act.

She argued that to adopt the argument of Counsel for the Appellant that a sign can be constructed without permission but permission must be sought to display the sign is to make a nonsense of the purpose of the Act since the construction and display of a sign is a single action and should not be divisible.

She contended that Section 513 of the Company's Act No. 19 of 1996 has superseded Section 23 of the Interpretation Act No. 18 of 1968 which states: "A notice or document may be served on a company (a) by leaving it at or sending it by telex or telefax or by prepaid post or cable addressed to the Registered Office of the Company or (b) by personally serving any Director Officer Receiver, Receiver Manager or Liquidator of the Company."

She vehemently argued that the Respondent had provided documentary evidence in the form of a report submitted by Timothy Mangal to the Development Control Officer and dated 28th October, 1998, and that the diary entry of the accompanying Officer substantiated that the Enforcement Notice was in fact served on the Appellant on the 28th day of October, 1998.

She said that there was no doubt that the display of the said advertisement was a "development" under the Act and was happy to note that Learned Counsel had so conceded.

She argued that once there is a procedure available for allowing an applicant to be heard he had to avail himself of it and not ignore it and afterwards say that the rule of Natural Justice had been breached.

Glynn vs Keele University 1971 2AER page 89

Learned Counsel contended that the Appellant had not denied that it was responsible for the erection of the sign. She quoted **Miller-Mead vs Minister of Housing 1963 1AER at 459 at page 467** which states that no information, defect or error is a material one except it is such as to produce injustice.

She said that the Appellant was in no doubt as to what was being referred to and that the name American Drywall was synonymous with the Appellant, that the misnomer did not invalidate the Enforcement Notice

She concluded by urging the Court to uphold the Enforcement Notice and award costs to the Respondents.

CONCLUSION

The Land Development (Interim Control) Act 1971 as amended by No. 8 of 1984 and No. 11 of 1990 is "to make provision for the orderly and progressive development of land and to preserve and improve the amenities..."

Section 7A(2) of the said Act provides:

> *"The date stated in a notice served under this section as the date on or after which the intended exercise of the power therein mentioned is intended to begin shall be not less than one month after the service of such notice and the Authority shall not do any act or thing in exercise of such power in relation to the building or land mentioned in the notice before the said date."*

Subsection 3 sets out what a person served with such a notice may do if he considers the period fixed by such a notice to be insufficient. It therefore follows in my judgment that the date on an Enforcement Notice is of crucial importance.

Section 19 of the Act reads:

(1) *"If it appears to the Authority that the amenity of any area is seriously injured by reason of the ruinous, unsafe or dilapidated condition of any building or by the condition of any land due to the deposit of refuse, spoil or derelict vehicles or the occupation of land or a public road for any purpose including the repair of vehicles, it may serve on*

the owner or occupier of the land or the person responsible for the offence a notice requiring such steps to be taken for abating the injury as may be specified by the Authority.

(2) If any step specified in the notice served under Subsection (1) is not complied with, the Authority may execute the work required to abate the injury and recover from the owner or the occupier the expenses reasonably incurred for any step taken by the Authority under this Section."

Section 20(1):

(1) "No advertisement whether attached to a building or a boarding shall be displayed except with the written permission of the Authority.

(2) Any person who displays any advertisement without the written permission of the Authority shall be guilty of an offence against this Act."

The Respondents led evidence and tendered exhibits through three people who assured the Court that the Enforcement Notice was served on the 28th day of October, 1998.

The Appellant on the other hand led evidence through the same number of persons and also tendered exhibits to show that the Enforcement Notice was served on the 4th day of November, 1998 thus breaching the one month minimum period set by law.

and other works on agricultural holdings not including partition and subdivision of land solely for agricultural purposes."

In my judgment that simply means, as long as one does not intend to live in it no planning approval is required. The development under consideration is indisputably a sign and by no stretch of the imagination could it be said that it was constructed for human habitation. I disagree with the interpretation put forward by Learned Counsel for the Respondent on that subsection of the Act (noted earlier).

I therefore find that the said sign namely:

AMERICAN DRYWALL
100% Satisfaction Guaranteed **ST. LUCIA**
Simply Beautiful

constitutes an excepted development under the First Schedule as amended by the Act.

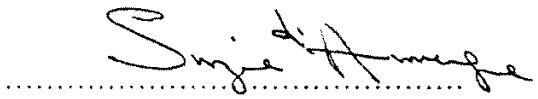
With regard to contravention under Section 20 of the Act. The section is explicit but the forum for determination of this matter is a Court of Summary Jurisdiction as stated by Subsection 3 of Section 22.

Having arrived at this conclusion I do not find it necessary to decide on the other grounds pleaded and argued.

My order is as follows:

1) The appeal is allowed.

2) That there be no order as to costs.



SUZIE d'AUVERGNE
High Court Judge