

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2009/0142

BETWEEN:

GRENADA BUILDING AND LOAN ASSOCIATION

Applicant

And

THE PLANNING AND DEVELOPMENT AUTHORITY

Respondent

Appearances:

Mr. Leslie Haynes, Q.C., and Ms. Dia Forrester for the Applicant
Mr. Rohan Phillip and Ms. Karen Samuel for the Respondent

2009: June 3rd, 5th

JUDGMENT

- [1] **MICHEL, J. (Ag.):** On 9th April 2009 the Applicant, Grenada Building And Loan Association, filed an application for leave to apply for judicial review of a permission granted on 29th June 2007 by the Respondent, The Planning And Development Authority, to the Grenada Co-operative Bank Limited (the Bank) to develop certain lands adjacent to the property of the Applicant known as "Argyle House" and situate at Church Street in the City of Saint George. The application was supported by two affidavits by the Secretary Manager of the Applicant with exhibits attached thereto.
- [2] The application for leave was opposed by the Respondent and an affidavit in opposition by the Chief Executive Officer of the Respondent was filed.
- [3] The application for leave was heard on 3rd June 2009, with oral submissions made by and authorities referred to and presented to the Court by Counsel on behalf of the Applicant and the Respondent.

[4] The application for leave was made in accordance with Rule 56.3 of the Civil Procedure Rules 2000.

[5] The grounds of the application were as follows:

1. The granting of the said permission is contrary to law and in particular to Part III Regulation 8 of the Land Development Control Regulations 1988 SRO No. 13 of the Laws of Grenada which on a proper construction thereof mandates an application for development including the erection of a commercial building within ten feet from any side or rear boundary of the plot to include a statement signed by the owner of the adjacent plot affected by the proposed encroachment on the boundary signifying his agreement or objection to the application and or proposal.
2. The Respondent acted in excess of its jurisdiction by considering an application and or granting permission to develop lands adjacent to the Applicant's property known as "Argyle House" which application and permission included the erection of a commercial building within 10 feet from any side or rear boundary of the Applicant's property without the application containing a signed statement by the Applicant signifying his consent or objection to the application and or proposal.
3. The Respondent in granting the said permission failed to consider whether the Applicant as adjacent owner of the plot on a common boundary affected by the proposed encroachment agreed or objected to the development and or proposal being a condition or procedure required by law.
4. The Respondent in granting the permission in respect of an application to develop land including the erection of a building less than ten feet from the common boundary line with the Applicant and which application did not include a statement signed by the Applicant as adjacent owner signifying

his agreement or objection thereto acted unreasonably or irregularly or exercised its discretion in an improper manner.

5. The Respondent acted in breach of the principles of natural justice in that the Respondent considered the application which did not include a statement signed by the Applicant as adjacent owner signifying its agreement or objection thereto and granted the said permission without giving the Applicant an opportunity to be heard in a matter which affected the Applicant and in which the Applicant has an interest.

[6] The issues which should concern a court in determining whether or not to grant leave are essentially threefold. Firstly, does the Applicant have a sufficient interest in the matter to which the application relates to justify granting leave to the Applicant to apply for judicial review? Secondly, does the Applicant have a prima facie or arguable case for the grant of the relief claimed? Thirdly, has there been unreasonable delay by the Applicant before making the application for leave?

[7] Having heard the eloquent and erudite submission of Learned Queen's Counsel on behalf of the Applicant, and notwithstanding the rather formidable response of Learned Counsel for the Respondent, this Court has no difficulty in concluding that the Applicant, being the owner of property adjoining the lands which the Respondent granted the Bank permission to develop, does have a sufficient interest in the matter to which the application relates. The Court also concludes that the Applicant does have a prima facie and/or an arguable case for the grant of the relief claimed. The very lengths to which Counsel for the Respondent had to go in offering an alternative construction for and interpretation of Part 111 Section 8 of the Land Development Regulations 1988 is indicative of the fact that there is at least an arguable case that it was breached by the Respondent in the granting of permission to the Bank to develop the lands adjoining the Applicant.

[8] This brings the Court to the third issue to be considered in determining whether or not to grant the Applicant leave to apply for judicial review of the decision by the Respondent.

- [9] The decision which the Applicant seeks judicial review of is a decision of the Respondent made on 29th June 2007 – over 21 months before the date of application for leave to quash it. By any standard this would be a considerable delay, which would only not be considered unreasonable if there were very good reasons for it.
- [10] Learned Queen’s Counsel submitted that, although planning permission was given in June 2007, the Applicant did not become aware of that until September 2008 and so, in effect, the delay between June 2007 and September 2008 was not unreasonable.
- [11] All things considered, it is a big ask, for the Court to ignore or forgive a delay of 15 months on the basis of the Applicant’s alleged ignorance of the fact of planning permission having been given to its neighbours, which it is reasonable to assume that it could have ascertained at any time by a simple enquiry. Be that as it may, the Court will for now treat this 15-month delay as reasonable or at least not unreasonable.
- [12] Then one comes around to September 2008, by which time the Applicant is definitely aware that the Bank is constructing a building next door and certain activities preliminary thereto have commenced on the site. Actual construction commences in October 2008 and the Applicant is, by 10th October 2008 at least (the date of the John Report) aware of the nature of the planning permission. Still no application for leave to quash the planning permission and no action on the matter until November 2008.
- [13] Learned Queen’s Counsel submitted that this 2-month delay is reasonable because, although the Applicant is aware then that the building is being constructed and permission has been granted by the Respondent to do so, the precise terms of the permission are not then known to the Applicant and it is only when on 10th November 2008 the Applicant was actually provided with a copy of the planning permission that unreasonableness of delay might begin to arise.

- [14] Another big ask of the Court, to ignore or forgive a further 2-month delay on top of the previous 15, because the Applicant has only in November 2008 had sight of the actual planning permission of June 2007.
- [15] Then there is a delay of a further 3 months during which time the Applicant institutes proceedings against the Bank, joins the Respondent as a party to the proceedings, appeals to the Court of Appeal and then on 12th February 2009 seeks and obtains leave to discontinue the proceedings. Still no application for leave to quash the planning permission.
- [16] Learned Queen's Counsel submitted that this 3-month delay is reasonable because the Applicant was badly advised and pursued unmeritorious legal proceedings which it eventually had to discontinue.
- [17] Another big ask of the Court, to ignore or forgive a further 3-month delay on top of the previous 17.
- [18] Then there is a further delay of just under 2 months before the Applicant finally seeks leave on 9th April 2009 to quash the decision of the Respondent to grant planning permission to the Bank on 29th June 2007.
- [19] Learned Queen's Counsel submitted that this further delay is reasonable as time required by the Applicant to prepare and pursue the present proceedings.
- [20] By now, the sheer accumulation of causes of delay, combined with the extent of the delay, have become overwhelming, and it would in the circumstances be unreasonable for this Court not to determine that the Applicant's delay in seeking leave to quash the permission granted by the Respondent in June 2007 was unreasonable.
- [21] The submission by Learned Queen's Counsel that even if the Court determines that the delay is unreasonable the Court can still exercise its discretion to grant leave is noted and accepted. But this Court considers that the extent of the delay involved here is such that it would be detrimental to good administration if the

decision of a public authority could be challenged after almost two years and after it has been acted upon at significant cost to a third party. And yes, substantial prejudice can be caused to the rights of that third party, the Grenada Co-operative Bank Limited.

[22] This Court accordingly declines to grant leave to the Applicant to apply for judicial review of the permission granted by the Respondent to the Grenada Co-operative Bank Limited on 29th June 2009.

[23] Each party to these proceedings shall bear its own costs.

Mario Michel
High Court Judge (Ag.)