

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2009/0014

BETWEEN

KENNY D. ANTHONY

Claimant

AND

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Appearances:

Mr. Anthony Astaphan SC, Ms. Renee St. Rose and Mr. Leslie Mondesir for the Claimant
Mr. Kenneth Monplaisir QC and Mr. Alberton Richelieu for the Defendant

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2009: July 9, 10
August 3rd
.....

JUDGMENT

- [1] **COTTLE J:** The economy of Saint Lucia, like many other Caribbean nations, is heavily dependant on the income generated by Tourism. Cognizant of this, the Parliament passed the Tourism Incentives Act chapter 15:30 of the Laws of Saint Lucia. Sections 5 and 8 of that set provides for a hotel operator who satisfies certain criteria to be awarded a designation as an approved tourism product. Operators of an approved tourism product are permitted to seek a permit allowing for importation of building materials articles or equipment. The imported goods are to be used exclusively for the construction and equipping of the approved tourism product.

[2] Dr. Keith Mondesir is an Ophthalmologist by profession. He is also a minister of government and a member of the Cabinet of Ministers of Saint Lucia. Dr. Mondesir is the proprietor of a boutique hotel, Tuxedo Villas which has premises at Rodney Bay in the northern part of St. Lucia.

[3] On 5th July 2007 the Cabinet of Ministers met and issued Cabinet Conclusion 543 of 2007. I reproduce the document in full:

543: APPLICATION BY TUXEDO VILLAS FOR DUTY FREE CONCESSION UNDER THE

TOURISM INCENTIVES ACT. NO. 7 OF 1996 TO FACILITATE REFURBISHMENT

Cabinet considered a Memorandum dated 5th July, 2007 submitted by the Ministry of Tourism and Civil Aviation and pursuant to the Tourism Incentives Act. No. 7 of 1996 approved the following for the refurbishment of Tuxedo Villas:

- 1. 100% waiver of Import Duty and Consumption Tax on all furniture, soft furnishing, fittings, kitchen and restaurant and bar equipment, conference equipment, laundry equipment, all linen and drapery purchased locally and/or imported for the renovation and upgrade of Tuxedo Villas, subject to verification of the Bill of Quantities by the Ministry of Tourism and Civil Aviation;*
- 2. That the concession be applicable for a period of two (2) years ending 31st July, 2009;*
- 3. A tax holiday for ten (10) years*

[4] Acting under this Cabinet Conclusion Minister Mondesir imported certain goods and electronic equipment. Some of the goods were unloaded at a house in Bonne Terre about one mile away from the main business operation of Tuxedo Villas. That main operation is in Rodney Bay. It consists of ten (10) villas and a restaurant.

- [5] The officials of the Customs Department became suspicious. They investigated. They discovered that a 20 foot container of household items consigned to Tuxedo Villas of Rodney Bay was being off loaded at a house in Bonne Terre. The surveillance officer observed items of furniture assembled and installed at the Bonne Terre house. He saw Minister Mondesir sitting on some of the furniture on the patio of the Bonne Terre house.
- [6] The Comptroller of Customs enquired of Minister Mondesir. The Minister explained that the house at Bonne Terre was in fact part of the Tuxedo Villas Hotel despite the distance which separated the two locations. The Comptroller of Customs was still not satisfied. He wrote to the Minister in the following terms:

26th June, 2008

Honourable Keith Mondesir

Tuxedo Villas

Rodney Bay

Gros Islet

Dear Sir,

Ref: Importation of goods under concession for Tuxedo Villas

We refer to meetings held with you at your request on June 16 and 17, 2008 in relation to the importation of goods for the use of Tuxedo Villas, which were granted 100% waiver on import duties and Consumption tax by the Cabinet of Ministers.

The consignment of goods was offloaded at a house located at Bonne Terre purporting to be owned by you. We have been informed that the goods are meant for that house which you claimed to be an extension of the Tuxedo Villas and therefore qualify under the concession.

You have requested at those meetings and agreed to furnish the Customs Department with proof of your claim via confirmation letter from the Ministry of Tourism. However, this information has not been provided to date.

The Department therefore wishes to further inform that we would be grateful if such confirmation could reach us no later than July 4, 2008 in order to update our records accordingly.

Kindly note that in the absence of such confirmation by the given date the Customs Department will be left with no option but to proceed with the appropriate action as provided to under the Customs laws.

Please be guided accordingly.

Yours faithfully,

.....
Terrance Leonard
Comptroller of Customs and Excise

- [7] Minister Mondesir had shared the concerns of the Customs Department with the Minister of Tourism. The Ministry of Tourism did not confirm to the Customs Department that the house at Bonne Terre was a part of Tuxedo Villas Hotel. Instead on 26th June, 2008 after the items had been imported and used by Minister Mondesir, the Cabinet of Ministers met and issued Cabinet Conclusions 574 (c) of 2008 in the following terms:

26th June, 2008

The following Cabinet Conclusion is submitted for your attention:

574(c) Application by Tuxedo Villas for Duty Free Concession under the Tourism Incentives Act. No. 7 of 1996 to Facilitate Refurbishment
Minute No. 543 of 5th July, 2007

Cabinet, having noted that Tuxedo Villas comprises six (6) bedroom villas, four (4) 1 bedroom villas, one Restaurant Rodney Bay and one three (3) bedroom, three (3) bathroom

villa at Bonne Terre and, pursuant to the Tourism Incentives Act, No. 7 1996, approved the following on behalf of Tuxedo Villas:

- 1. 100% waiver, of Import Duty and Consumption Tax on all furniture, soft furnishing, fittings, kitchen and restaurant and bar equipment, conference equipment, laundry equipment, all linen all drapery purchased locally and/or imported for the renovation and upgrade of Tuxedo Villas, subject to verification of the Bill of Quantities by the Ministry of Tourism and Civil Aviation;*
- 2. That the concession be applicable for a period of two (2) years ending 31st July, 2009;*
- 3. A tax holiday for ten (10) years*

[8] The Claimant is the leader of the Opposition in St. Lucia. He is the former Prime Minister. He sought and obtain leave for judicial review of Cabinet Conclusion 574 (c) of 2008. He seeks to have the decision quashed on the basis that it is unreasonable arbitrary irrational and/or perverse. The Claimant says the Cabinet decision was made in bad faith. He seeks an order directing the Defendant to revoke the decision and conclusion of the Cabinet.

[9] Even before the present claim the Comptroller of Customs had concerns about the legitimacy of the Cabinet Conclusion now being impugned. He wrote to the Attorney General seeking guidance. The learned Attorney General responded by letter. It is quite a short missive. I am content to reproduce it in full:

18th August, 2009

*Mr. Terrance Leonard
Comptroller
Customs & Excise Department
Jeremie Street
CASTRIES*

Comptroller of Customs,

*Cabinet Conclusion No. 574 (c) of 2008 Application by
Tuxedo Villas for Duty Free Concessions*

Pursuant to my letter dated 30th July, 2008, I am satisfied that Cabinet Conclusion No. 574 (c) of 2008 was a proper one based on available documentary and other evidence.

Yours sincerely,

.....

*Nicholas O. Frederick
Attorney General and Minister of Justice*

*CC: Solicitor General
Permanent Secretary, Ministry of Tourism and Civil Aviation
Hon. Keith Mondesir*

- [10] At the trial of this claim the Attorney General did not attend to give evidence. The court was not advised as to what was the documentary evidence and other evidence which satisfied the Attorney General who is the Defendant in this claim.
- [11] Much of the argument in this matter concerned the question of whether the Bonne Terre house – sometimes referred to as the Bonne Terre Villa - was in fact a part of Tuxedo Villas. The Cabinet Conclusion of 2008 merely “noted” that Tuxedos Villas included a three (3) bedroom, three bathroom villa at Bonne Terre.
- [12] I will turn now to examine the evidence adduced to see whether there existed any basis upon which Cabinet could arrive at that conclusion.
- [[13] The court was shown a receipt for \$2, 500.00 dated 22nd March, 2000. The receipt is headed Tuxedo Villas. It is unsigned. It does not refer to any particular room number. It speaks to a “House in Bonne Terre” and appears to be written to Emmanuel Motel. The court received no explanation of this cryptic document.

- [14] Next there was an electricity bill. It is addressed to Helen Mondesir, Bonne Terre, Tuxedo Villas, Reduit Beach, Castries. In his evidence Minister Mondesir explained that Helen Mondesir is his mother. He added that the bill produced is for the Bonne Terre Villa and is an attempt to demonstrate that this villa is a part of Tuxedo Villas. Yet on cross examination he agreed that the electricity company charges different rates for domestic properties as opposed to commercial properties. The rate applied to the Bonne Terre Villas over all these years has been the domestic rate which is applicable to private residences.
- [15] The minister also adduced a receipt to show that on 12th July, 2001 the electricity company was paid \$66.10 for the supply of electricity to the Bonne Terre Villa.
- [16] Finally, there was the letter of application to the minister for duty free concessions. The letter is signed by Minister Mondesir. It does not say that Tuxedo Villas includes a Villa at Bonne Terre. I reproduce it in full :

Tuxedo Villas

Rodney Bay

P. O. Box 508

Phone 1 758 452 8553

Fax 1 758 452 8577

Email: tuxedovillas@candw.lc

Web site: [www. Tuxedovillas.com](http://www.Tuxedovillas.com)

19th June, 2007

Hon. Allen Chastanet

Minister of Tourism

Ministry of Tourism

3rd Floor Stanislaus James Building

Waterfront

Castries

Dear Hon Minister

Re: Tuxedo Villas

Tuxedo Villas will be undertaking the refurbishment of its villas. This has not been done in excess of ten (10) years.

The refurbishment will comprise the following:

- *Six two bedroom villas*
- *Four one bedroom villas;*
- *One Restaurant at Rodney Bay; and*
- *A three bedroom, three bathroom villa at Bonne Terre Rodney Bay.*

We wish to apply for the necessary duty free concession in this regard.

Thanking you in advance for your kind co-operation.

Yours faithfully

.....
Dr. Kenneth Mondesir
Proprietor

[17] The reference to the address of the last villa is confusing. It seems to say that Bonne Terre is a part of Rodney Bay.

[18] I turn to examine the evidence of the Minister of Tourism. The Minister was frank and open. He impressed the court as a reliable witness who gave his evidence in a credible and forthright manner.

[19] In cross examination the Minister of Tourism was candid. He readily admitted that, in coming to the original Cabinet Conclusion giving concessions to Tuxedo Villas, Cabinet did not include the house at Bonne Terre. The Minister, a man of long experience in the hotel industry and a resident of Rodney Bay, did not know of the existence of the Villa at Bonne Terre. As far as he was concerned, at the time of the initial application, as evidenced by his memorandum to the Cabinet seeking the concessions, Tuxedo Villas comprised only the buildings at Rodney Bay. He identified them as ten villas or units, a conferencing facility, a store room, a restaurant and bar facility and laundry facilities.

- [20] There was no external indication on the Bonne Terre Villa to show that it is a part of Tuxedo Villas. To borrow a line from a local firm of sign painters – a business with no sign is a sign of no business. None of the witnesses in this matter apart from Dr. Mondesir, gave evidence that they knew that Tuxedo Villas operated a Bonne Terre Villa.
- [21] It was only after Minister Mondesir had imported the goods in question and utilized them at Bonne Terre that the concerns of the Customs officials were raised. It is at that point that Minister Mondesir contacted the Minister of Tourism to inform him of the investigations of the customs department.
- [22] I have set out the factual background. In all of the turmoil of the contest it is easy to lose sight of the question that falls for determination in this matter. Does the decision of the Cabinet complained of stand to be quashed for the reason advanced by the Claimant?
- [23] The short answer is that the decision must be quashed as having been arrived at without any reasonable basis. It must be assumed that the defendant has disclosed to the court all of the material upon which the Cabinet came to the Conclusion that Tuxedo Villas includes a three bedroom, three bathroom villa at Bonne Terre. As earlier noted the only evidence upon which the Cabinet could have arrived at its conclusion are the documents to which I have already referred. With the best will in the world I cannot see that these provide any rational basis for Cabinet to arrive at the conclusion that it did.
- [24] The Cabinet Conclusion itself does not reveal that any memorandum or document was placed before the cabinet for it arrive at its decision.
- [25] The Cabinet minutes for the meeting reflect that Minister Mondesir was present. The Minister says that he left the meeting before the decision was taken. He is supported in this by evidence of the Cabinet Clerk. She said that she prepared the minutes. These were never amended. No one suggested in any subsequent meeting that they were inaccurate. Yet the Clerk swore that the Minister left the Cabinet meeting before the matter came up for decision. Under cross examination she admitted that she would have noted if a Cabinet Minister left the meeting. No such note concerning Dr. Mondesir having left the meeting was made. In the circumstances, I accept that the Cabinet minutes must be taken to be correct.
- [26] I prefer the official record to the recollection of the clerk of events which happened more than a year ago and certainly many Cabinet meetings ago. This means that I find that Minister Mondesir was present at

the meeting at which the questioned decision was made. The obvious conflict of interest makes the Cabinet decision questionable.

[27] I cannot help but conclude that the Cabinet of Ministers was influenced in arriving at Cabinet Conclusion 574 (c) of 2008 by the ipsa dixit of Minister Mondesir at the Cabinet meeting. I am reinforced in that conclusion by the testimony of the Minister of Tourism who presented the earlier application for concessions that led to Cabinet Conclusion 543 of 2007. The Honourable Minister admitted that he presented his application to the Cabinet based on a conversation he had with Minister Mondesir. He had not seen any documentation or written application by Minister Mondesir at the time the application to the Cabinet was presented.

[28] I therefore grant an order quashing the decision of the Cabinet and Cabinet Conclusion 574 (c) of 2008 dated 26th June, 2008 as unreasonable in the sense that no reasonable grounds have been shown upon which Cabinet could have arrived at the decision at which it arrived.

[29] The respondent will pay the costs of this claim in the prescribed sum of **\$14,000.00**.

[30] I close by expressing my gratitude to all Counsel involved for the invaluable assistance they have given the court in this unfortunate matter.

BRIAN COTTLE
High Court Judge