

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2011/0456

BETWEEN:

IN THE MATTER OF PART 56 OF THE CIVIL  
PROCEDURE RULES 2000

AND

IN THE MATTER OF THE GAMING CONTROL  
ACT CAP.13.13 OF THE REVISED LAWS OF SAINT  
LUCIA, 2001

AND

IN THE MATTER OF THE NATIONAL LOTTERIES  
AUTHORITY ACT CAP. 13.20 OF THE REVISED LAWS  
OF SAINT LUCIA, 2001.

TREASURE BAY (ST. LUCIA) LTD.

Claimant

AND

1. THE GAMING AUTHORITY
2. THE ATTORNEY GENERAL OF SAINT LUCIA
3. THE NATIONAL LOTTERIES AUTHORITY

Respondents

Appearances:

Mr. Peter I. Foster for the Claimant and with him Ms. Reneé St. Rose.  
Ms. Esther Greene-Ernest for the First Respondent.  
Mr. Raulston Glasgow, Solicitor General for the Second Respondent and with him  
Mr. Deale Lee and Ms. Cagina Foster.  
Mr. Vern Gill for the Third Respondent.  
Mr. Garth Patterson Q.C for the Applicant, CAGE St. Lucia Ltd. and with him Ms.  
Alana Gore and Ms. Eugenia Dixon.

-----  
2011: October 13<sup>th</sup>, 18<sup>th</sup>.  
November 7<sup>th</sup>.  
-----

[1] WILKINSON J. On July 6<sup>th</sup> 2011, the Claimant filed its fixed date claim form seeking judicial review of certain decisions and certain relief. The Applicant, CAGE St. Lucia Ltd. (hereinafter "CAGE") filed a notice of application on September 23<sup>rd</sup> 2011, and an amended notice of application on September 27<sup>th</sup> 2011 seeking an order that it be joined in the proceedings as a Respondent. On October 13<sup>th</sup> 2011, the first morning of the hearing of CAGE's application, the Claimant filed an amended fixed date claim form. By the amended fixed date claim the Minister for Social Transformation, Youth, & Sports (hereinafter "Minister for Social Transformation") was added, the decisions of which judicial review was sought was expanded and so too was the relief sought. Counsel for CAGE stated that CAGE had not had sight of the amended fixed date claim form and therefore it could not speak to it. The hearing therefore proceeded on the basis of the fixed date claim form filed July 6<sup>th</sup> 2011.

The Claimant's application for judicial review:

[2] The Claimant's fixed date claim filed July 6<sup>th</sup> 2011, sought administrative orders and declarations said to be arising from:

(i) the failure of the First Respondent to enforce the provisions of the Gaming Control Act as they relate to the importation, distribution and operation of gaming devices by CAGE and or the Third Respondent in Saint Lucia;

(ii) the decision of the Government of Saint Lucia and or the Cabinet of Ministers to authorize the importation, distribution and or operation of gaming devices in Saint Lucia by CAGE and or the Third Respondent;

(iii) the unlawful importation, distribution and operation of gaming devices in Saint Lucia by the Third Respondent in violation of the Gaming Control Act and the National Lotteries Authority Act.

The relief sought was:

- (i) An order that the First Respondent be required to enforce the provisions of Section 7 of the Gaming Control Act as it relates to the importation, distribution and operation of gaming devices, particularly Video Lottery Terminals (hereinafter "VLTs") by CAGE and or the Third Respondent in breach of the provisions of the Gaming Control Act and the National Lotteries Authority Act.
  - (ii) An order that the First Respondent do investigate the importation, distribution and operation of gaming devices, particularly VLTs ensuring therefore that the importation, distribution and or operation of the gaming devices shall cease until such time as a license is issued in accordance with the Gaming Control Act.
  - (iii) An order (declaration) that the decision of the Government of Saint Lucia and or Cabinet of Ministers to authorize the importation, distribution and or operation of gaming devices, particularly VLTs into Saint Lucia is unlawful and improper.
  - (iv) An order that the decision of the Cabinet of Ministers and the Government of Saint Lucia is unreasonable, arbitrary, irrational and/or perverse.
  - (v) An order quashing the decision of the Government of Saint Lucia and or Cabinet of Ministers to authorize the importation and operation of gaming devices in particular VLTs into Saint Lucia.
  - (vi) A declaration that the VLTs imported and or operated by CAGE and or the Third Respondent are gaming devices under the Gaming Control Act.
  - (vii) A declaration that the importation, distribution and operation of the VLTs by the Third Respondent is unlawful and in breach of the National Lotteries Authority Act and the Gaming Control Act.
- [3] The fixed date claim form was supported by the affidavit of Ms. Susan Varnes, president of the Claimant. She deposed that the Claimant is the owner and operator of Treasure Bay Casino situate at Bay Walk Mall, Gros Islet and it commenced operations on December 13<sup>th</sup> 2010.
- [4] Historically, the Claimant first submitted its application for a gaming license on March 30<sup>th</sup> 2004 and on September 19<sup>th</sup> 2005, the Cabinet of Ministers first approved it license. As part of the process of applying for a licence the Claimant underwent extensive applications, checks, investigations and did so at considerable

expense, approximately one hundred and fifty thousand United States dollars (US\$150,000.00). The Claimant was issued as a series of short term licenses for operation from 2005 onward. At October 13<sup>th</sup> 2010, the Claimant was granted a license with effect from October 1<sup>st</sup> 2010. The license first period was that of six (6) months to facilitate finalization of a report to be submitted to the First Respondent by SPECTRUM who was conducting due diligence checks on behalf of the First Respondent. A favourable report was received and the Claimant sought from the First Respondent a licence pursuant to section 21 of the Gaming Control Act and received a license for the period April 1<sup>st</sup> 2011 to June 30<sup>th</sup> 2011. The First Respondent further requested of the Claimant a Gaming bond. The Claimant submitted a draft bond for approval to the First Respondent and did propose that it also offer its immoveable property as security for the bond.

- [5] By letter dated June 29<sup>th</sup> 2011, the Claimant was informed by the First Respondent that it was prepared to accept the property offered as security for the bond and that pending settlement of the terms of the bond it would recommend an extension of the gaming operator's licence from July 1<sup>st</sup> 2011 for six (6) months (December 31<sup>st</sup> 2011). Pursuant to the gaming licence the Claimant is authorized to conduct gaming on its property. At present the Claimant is the sole holder of a gaming operator's licence at Saint Lucia.
- [6] It was around February 9<sup>th</sup> 2011, that the Claimant became aware of CAGE, a private company. CAGE has imported or caused to be imported VLTs into Saint Lucia. The Claimant was informed that CAGE houses the VLTs in a warehouse at Vide Bouteille, Castries, and that CAGE has received permission from the Cabinet of Ministers or the Government of Saint Lucia to import, distribute and operate VLTs. The Claimant came to understand these matters from a report published in the media of an interview with the Minister for Social Transformation, he is the Minister with responsibility for the National Lotteries Authority Act. This all concerned the Claimant as VLTs are gaming devices, and are essentially the equivalent of slot machines. There had been no publication as far as the Claimant was aware in the Gazette or otherwise of any application for a gaming operator's licence pursuant to

the Gaming Control Act by CAGE or the Third Respondent and further, confusing the issue was the statement of the Minister for Social Transformation in the press that the VLTs were merely “lottery ticket generators”.

- [7] At February 16<sup>th</sup> 2011, the Claimant wrote to the Minister of Finance, the Minister of Social Transformation, and the Third Respondent requesting amongst other things that the gaming devices imported by CAGE be regulated and stated that the importation into and operation of the VLTs in Saint Lucia was in breach of the Gaming Control Act and the National Lotteries Authority Act. No reply was received from either of the Ministers. On February 23<sup>rd</sup> 2011, the Claimant requested a meeting.
- [8] At February 21<sup>st</sup> 2011, the Claimant received a letter from CAGE purporting to reply to the Claimant’s letter of February 16<sup>th</sup> 2011. It stated that CAGE had entered into a management agreement with the Third Respondent to manage certain additional lottery games for the Third Respondent and it alleged that any claim of any adverse effect on Saint Lucia by the impact of the VLTs was without merit. No statement was made about the Claimant’s contention that importation, distribution and operation of the VLTs was illegal. The Claimant on February 23<sup>rd</sup> 2011, by letter from its attorneys-at-law responded to CAGE.
- [9] At March 11<sup>th</sup> 2011, the First Respondent responded by letter to the Claimant’s letter of February 16<sup>th</sup> 2011. The First Respondent advised that a meeting had been convened by the Honourable Prime Minister (the Minister with responsibility for administering the Gaming Control Act) at which the Minister for the Third Respondent was present, the Attorney-General, the Cabinet Secretary, the Secretary of Finance, a representative of the Third Respondent and members of the First Respondent. The letter stated that under the directions of the Honourable Prime Minister, a representative of the First Respondent and Third Respondent were to meet the Second Respondent as a matter of urgency to chart a possible way forward to be proposed to the Cabinet of Ministers.

- [10] Throughout March 2011, Ms. Varnes, officers of the Claimant and the Claimant's attorneys-at-law tried to ascertain the outcome of the proposed meeting but their information was that to date the meeting had not been convened.
- [11] In the meantime, at or about March 31<sup>st</sup> 2011, the Claimant became aware that VLTs were being distributed and were operational. The VLTs are now widely distributed in and around Saint Lucia in restaurants, bars and rum shops. They are available for use by the public, unmonitored and are within the reach of minors.
- [12] There was no public information about the alleged management agreement between CAGE and the Third Respondent. CAGE has never claimed to hold such a licence. She had seen a copy of the agreement between CAGE and the individual bar owners where the VLTs are operated and it is described as an "Agent Terminal Participation Agreement" and it gives CAGE amongst other things exclusive right to gaming and referred to the VLTs as devices and related equipment. The agreements provide for no term between the parties.
- [13] The Claimant conducted an investigation of CAGE and its operations in other jurisdictions and found a press release issued at July 29<sup>th</sup> 2009, by Hard Rock Café, the RLJ Companies and Caribbean CAGE LLC (hereinafter "CAGE LLC"). CAGE LLC, the parent company was described as being "a gaming company focused primarily on installation, operation and management of VLGs and terminals linked to gaming systems and game content throughout the Caribbean and Latin America". In the press release, CAGE LLC referred to and described itself as amongst other things as being (i) in the business of gaming, and (ii) they accepted VLTs are gaming devices used in the Hard Rock branded casino.

CAGE's application:

- [14] On September 23<sup>rd</sup> 2011, CAGE filed a notice of application for joinder in the proceedings as a Respondent. At September 27<sup>th</sup> 2011, CAGE filed an amended

notice of application seeking orders pursuant to CPR 2000 Part 19. The orders sought were:

- (i) That CAGE be added to the proceedings as Fourth Respondent;
- (ii) That the Claimant file an amended fixed date claim form within 14 days of the date of the order granting the application by CAGE;
- (iii) That the Claimant do serve upon CAGE within 14 days of the date of filing the amended fixed date claim form:
  - (a) a certified copy of the amended fixed date claim form, together with copies of all affidavits filed in connection with the claim;
  - (b) any prescribed forms; and
  - (c) copies of any applications for interim relief filed herein together with any affidavits filed in support or in opposition thereto.
- (iv) That CAGE be at liberty to file an affidavit(s) in answer to the claim and/or in response to the application for an interim injunction filed herein on behalf of the Claimant, within 28 days of the date of service upon CAGE of all documents referred to in the foregoing paragraph;
- (v) Costs be provided for; and
- (vi) Such further or other relief as the Court deems fit.

The grounds of the application were:

- (i) That CAGE, carried on the business of operating and managing video lottery games (hereinafter "VLGs") and terminals in St. Lucia on behalf of the Third Respondent, on an exclusive basis, pursuant to a Professional Services Contract dated August 12<sup>th</sup> 2010, (hereinafter "the Contract") made between the Third Respondent and CAGE Cyprus Holding Company Limited (hereinafter "CAGE Holding"). CAGE is a wholly owned subsidiary of CAGE Holding.
- (ii) Pursuant to the Contract, CAGE imported and operates 369 VLGs at approximately sixty four (64) locations across Saint Lucia, and its strategic partners have invested over eight million, one hundred thousand dollars (EC\$8,100,000.00) in the hardware, system network, game content, startup and other direct cost related to the startup and operation of VLGs and earns

approximately one hundred and ten thousand dollars (EC\$110,000.00) per month from operation of the VLGs. CAGE employs approximately forty (40) employees in its business. From the gross lottery revenues CAGE pays to the Third Respondent a monthly sum of approximately three hundred thousand dollars (EC\$300,000.00). CAGE has entered into third party contracts with various agents relative to the operation of the VLGs at sixty four (64) locations throughout Saint Lucia. These agents receive commission of 25 percent of the net win after payment of the monthly fee to the Third Respondent.

- (iii) The Claimant's claim is for certain administrative orders and declarations, including a declaration that the importation, distribution and operation of the VLGs by the Third Respondent is unlawful and in breach of the National Lotteries Authority Act and the Gaming Control Act.
- (iv) CAGE was not joined as a Respondent in the claim.
- (v) The Claimant's notice of application dated August 15<sup>th</sup> 2011, seeks inter alia, an interim injunction restraining the importation, distribution and operation of VLGs by the Third Respondent in Saint Lucia. If the Claimant's application is granted, it would prevent CAGE from carrying on its business in Saint Lucia while the claim is pending. In light of CAGE's substantial investment and commitments, this would have the effect of putting CAGE and its agents out of business, and thereby cause CAGE to suffer or sustain severe hardship, economic and financial loss, and irreparable damage.
- (vi) CAGE, accordingly, has a legal and pecuniary interest in and is directly affected by the issues in these proceedings and its outcome.

[15] CAGE's application was supported by two (2) affidavits of Mr. Rafael De La Cruz filed respectively on September 23<sup>rd</sup> 2011, and October 13<sup>th</sup> 2011. Mr. De La Cruz is the executive vice president for strategy and business development of CAGE LLC an affiliate of CAGE. His responsibilities include expansion and development of CAGE and as a result of which he is familiar with the business of CAGE especially the operation of VLGs and terminals at Saint Lucia.

[16] CAGE was incorporated under the laws of Saint Lucia and is a wholly owned subsidiary of CAGE Holding and which company was incorporated at Cyprus.

[17] Mr. De La Cruz states that he was informed by Mr. Robert L Johnson, the chairman of RLJ Companies and which company is the majority shareholder of



CAGE LLC that in or about August 2009, Mr. Johnson had met with senior Ministers of the Government of Saint Lucia to discuss a number of potential investment and project opportunities. At that meeting the interest of CAGE providing lottery games to the Government was raised. At September 19<sup>th</sup> 2009, the Prime Minister of Saint Lucia issued to CAGE LLC a letter of intent to discuss and negotiate the design, deployment and operations of VLGs in Saint Lucia. Mr. De La Cruz together with other members of CAGE LLC held several meetings with members of Government, the Board of the Third Respondent, and the Minister for Social Transformation reviewing the VLGs venture, negotiating the terms and conditions of the venture and discussing how the venture would be executed pursuant to the laws of Saint Lucia.

- [18] By letter date July 22<sup>nd</sup> 2010, the Minister for Social Transformation wrote to Mr. Robert Washington, chairman and CEO of CAGE LLC advising that Cabinet had taken a decision to authorize the responsible Minister of Government to instruct the Third Respondent to execute a ten (10) year exclusive contract with one (1) ten (10) years exclusive option term with CAGE LLC. By a Contract dated August 12<sup>th</sup> 2010, CAGE Holding agreed with the Third Respondent that it would develop, supply and operate VLGs and VLTs in Saint Lucia on an exclusive basis for the Third Respondent. The VLGs are all played by means of VLTs.
- [19] CAGE was incorporated for the purposes of operating and managing the VLGs pursuant to the Contract between CAGE Holding and the Third Respondent. CAGE Holding through CAGE implemented the Contract by carrying out various site visits, placing certain advertisements, carrying out personnel training and importing VLGs and ancillary equipment.
- [20] At November 26<sup>th</sup> 2010, the Ministry of Commerce at Saint Lucia issued a trade licence to CAGE. The licence states that CAGE can engage "in the business of creating an expanded lottery gaming experience for the local population in a particular market that can be shared secondarily by tourists/visitors".

- [21] The VLGs operation commenced at February 2011, when 3 VLGs were deployed to test the system. By March 18<sup>th</sup> 2011, CAGE began a full deployment of VLGs in approved agent locations at Saint Lucia. There are presently sixty-four agents (64) agents locations at Saint Lucia, with an estimated forty (40) employees. CAGE pays the Third Respondent an average monthly service fee of an estimated three hundred thousand E.C. dollars (EC\$300,000.00), and each agent receives 25 percent commission of the net win after payment of the monthly service fee to the Third Respondent.
- [22] CAGE's interest in the proceedings according to Mr. De La Cruz was, that CAGE and its partners had invested over eight million, one hundred thousand E.C. dollars (EC\$8,100,000.00) in hardware, system network, game content, start-up and operation of the VLGs at Saint Lucia. CAGE was responsible for all operational costs and expenses of the VLGs system and neither the Government of Saint Lucia nor the Third Respondent had invested any money in the VLGs operations.
- [23] CAGE he said generates approximately EC\$1.4 million per month of which it earns approximately one hundred and ten thousand E. C. dollars (EC\$110,000.00) and should the orders sought in the Claimant's pending application for an interim injunction be granted then it would prevent CAGE from carrying on its business at Saint Lucia while the hearing of the substantive matter was pending. An interim injunction would have the effect of putting CAGE and its agents out of business and thereby cause CAGE to suffer or sustain severe hardship, economic and financial loss and irreparable damage.
- [24] According to Mr. De La Cruz, there exist between CAGE Holding and CAGE a loan agreement made in or about August 2010, and the proceeds of which were used for marketing research and development, and other start up expenses. There are monthly repayments to be made out of earned income on this loan.

- [25] In so far as the Third Respondent was concerned, if the interim injunction was granted then CAGE would not be able to pay its agreed service fee of approximately three hundred thousand dollars (\$300,000.00) pursuant to the Contract. The Third Respondent depended on this revenue to pay its loan obligation that is secured by a mortgage over the National Cricket Grounds at Beausejour.
- [26] Other knock-on effects of an interim injunction would be that forty (40) employees of CAGE would be deprived of their source of income, and which totaled approximately one hundred and thirty five thousand dollars (\$135,000.00) per month, the agents at approximately sixty (60) locations would lose the substantial commissions they are paid a total of approximately three hundred thousand dollars (\$300,000.00) per month, the agents employed cashiers to facilitate operation of the VLTs and who in turn would lose their jobs, and CAGE engages carpenters, electricians and so forth at an approximate cost of twenty thousand dollars (EC\$20,000.00) per month to set up the VLTs, these persons too would be deprived of their source of income. CAGE in addition spends twenty seven thousand dollars (EC\$27,000.00) per month for its leased office space, housing and warehouse space. There is also spent approximately twelve thousand E.C. dollars (EC\$12,000.00) per month for leased vehicles. All of these payments would cease on the grant of an interim injunction.
- [27] The VLTs and ancillary equipment are owned by Scientific Games Worldwide Limited and CAGE LLC operates the VLTs under a revenue sharing agreement whereby a percentage of earnings generated is paid to Scientific Games Worldwide Limited. Should the interim injunction be granted the VLTs would no longer be profitable to Scientific Games Worldwide Limited and that company would retake the VLTs and terminate its agreement with CAGE LLC and this would essentially put CAGE out of business.

[28] Mr. De La Cruz added that should the interim injunction be granted then CAGE would lose a significant portion of its customer base as regular players would go elsewhere to play VLGs.

[29] Finally, he said CAGE was advised by its attorneys-at-law that the importation, distribution and or operation of the VLGs was not unlawful or contrary to the Gaming Control Act or the National Lotteries Authority Act. VLGs do not fall within the regulatory scheme of the Gaming Control Act as they do not constitute "gaming devices". The Third Respondent was empowered under National Lotteries Authority Act section 4(1) to carry out or provide for the operation of lotteries at Saint Lucia. The VLGs fell under the definition of lottery as contained in the National Lotteries Authority Act and as such the VLGs operations were implemented and regulated pursuant to the National Lotteries Authority Act. No licence is or was required by the Third Respondent for the importation, distribution or operation of the VLGs.

Issue:

1. The sole issue is whether pursuant to CPR 2000 Part 19 CAGE ought to be joined in these judicial review proceedings as a Respondent.

Submissions:

CAGE

[30] Counsel in the first instant after laying out the background of the monies spent by CAGE then sought to show that CAGE's involvement with the VLTs was as a direct result of negotiations between the Government, CAGE Holding and CAGE LLC.

[31] CAGE filed and argued that their application was pursuant to CPR 2000 Part.19 notwithstanding that the proceedings before the Court were judicial review proceedings.

[32] Counsel submitted that Part 19 applied because rule 19.3 provides that the Court may add a party with or without an application. An application to add a party may be made by any person who wished to become a party. The Court therefore had a discretion under this rule to add a party where it is desirable:

“(a) to enable it to resolve all matters in dispute in the proceedings; or

(b) to resolve an issue between an existing party and proposed new party, which is connected to the matters in dispute in the claim.”

Counsel cited **River Thames Society v. First Secretary of State and Others** [2006] All E.R. (D) 105 (Sep) where he said it was held that Part 19 of the Rules regarding addition and substitution of parties did not to apply to public law cases however, that case stated that power to add or substitute parties in public law cases could be had from the inherent jurisdiction of the Court which could be exercised in accordance with the principles under Part 19. Thus this Court may exercise its inherent jurisdiction in the circumstances to add CAGE as a party to the judicial review proceedings, and it could exercise that discretion in accordance with the principles of rule 19.3.

[33] He further submitted that in exercise of the principles of rule 19.3 the Court would find that CAGE satisfied both grounds under rule 19.2(3) for addition of CAGE as a party in that it was desirable (a) in order to enable the Court to resolved all matters in dispute in the proceedings, and (b) to resolve the issues between existing parties and CAGE which are connected with the matters in dispute in the judicial review proceedings.

[34] Counsel cited **Blackstone Civil Practice 2003** at paragraph 14.3 wherein it is stated:

“The Court is given wide discretion under CPR to order that a person be added, removed or substituted as a party to a claim, provided that, (in the case of adding a party), the limitation period has not expired. This power may be exercised upon application by a party or by a person who wishes

to intervene in proceedings to become a party, or by the Court acting on its own initiative.”

[35] He said there was an abundance of case law which spoke to the proper exercise of the Court’s power to add parties under the Old Rules of the Supreme Court and relying on **International Distillers and Vinters Ltd. v. J.F. Hillebrand (UK) Ltd.** (2000) Times 25 January 2000, he said that the principles as expounded under the Old Rules were equally applicable to CPR 2000 Part 19. He added that in **United Film Distribution Ltd. and Another v. Chhabria and Others** (2001) Times, 5 April, the court of appeal said that the discretion to add a party under CPR rule 19.2(2) (CPR 2000 rule 19.2(3) equivalent) is as wide as under its predecessors to that paragraph, namely RSC Order 15 rules 4 and 2(b).

[36] Counsel also relied on the older authority of **Bryne v. Browne** (1889) 22 Q.B.D. 657 where at page 666 Lord Esher said:

“One of the chief objects of the Judicature Acts was to secure that, wherever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have the power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same; it is sufficient if the main evidence and the main inquiry, will be the same, and the Court then has power to bring in the new parties and to adjudicate in one proceeding upon the rights of all the parties before it. Another great object was to diminish the cost of litigation. That being so, the Court ought to give the largest construction to those Acts in orders to carry out as far as possible the two objects I have mentioned.” (My emphasis)

[37] The Court was also referred to **Gurtner v. Circuit and Another** [1968] 2 Q.B. 587 where the Court allowed the Motor Insurers’ Bureau to be added as a Respondent to the proceedings. Lord Denning at pages 595 and 596 said:

“ It seems to me that when two parties are in dispute in an action in law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion, may allow him to be added as a party on such

terms as it thinks fit. By doing so, the Court achieves the object of the rule. It enables all matters in dispute to "be effectually and completely determined and adjudicated upon" between all those directly concerned in the outcome... It is thus apparent that the Motor Insurers' Bureau are vitally concerned in the outcome of the action. They are directly affected, not only in their legal rights, but also in their pocket. They ought to be allowed to come in as defendants. It would be most unjust if they were bound to stand idly by watching the plaintiff get judgment against the defendant without saying a word when they are the people who have to foot the bill." (My emphasis)

And Lord Diplock at page 602 said:

"Clearly the rules of natural justice require that a person who is bound by a judgment in an action brought against another party and directly liable to the plaintiff upon the judgment should be entitled to be heard in the proceedings in which the judgment is sought to be obtained. A matter in dispute is not, in my view, effectually and completely adjudicated upon, unless the rules of natural justice are observed and all those who will be liable to satisfy the judgment are given an opportunity to be heard." (My emphasis)

- [38] Reference was also had to **Denis O'Keeffe v. An Bord Pleanála and Francis O'Brien and The Attorney General, Notice Party** [1993] 1 IR 39. Here Radio Tara Ltd. had applied to the Meath County Council for planning permission to erect a transmitting station including a 300 foot mast and initially, was granted permission contrary to the direction of the elected members of the County Council. The applicant, a local resident appealed the decision to the second respondent, but the Board then granted permission subject to conditions. The applicant sought by way of judicial review an order of certiorari to quash the decision of the Board on certain grounds. The trial judge held that the decision of the Board was procedurally bad and therefore void by reason of (i) of the failure of the Board to state adequately reasons for its decision, and (ii) the failure of the Board to keep minutes of its deliberations leading to its decision. The Board appealed this decision. Before the court of appeal, Radio Tara applied to be added as a party for the purpose of the appeal. The court of appeal concluded that in the interests of justice that it was necessary that Radio Tara, who would be clearly affected by the result of the appeal, should be added as a party to it, and they were accordingly

given liberty to become a party subject to the restriction that they should not be entitled to raise any additional ground of opposition to the plaintiff's claim which had not been raised by the defendants in the high court. Finlay CJ said:

" The procedures adopted in this case and the problems which flowed from them make it desirable that I should make two further comments.

If application is made for liberty to issue proceedings for judicial review and the claim includes one for certiorari to quash the decision of a court or of an administrative decision-making authority the applicant must seek to add as a party any person whose rights would be affected by the avoidance of the decision impugned. If liberty is granted the court should except for special reasons ordinarily add such person as a party"<sup>1</sup>

"[39] Reference was also made to **Eircom plc v. Director of Telecommunications Regulation** [2002] IECH 72. Here, the applicant telecommunications company had sought judicial review of the respondent's decision directing it to charge, as interim prices, those prices specified in its decision. E Ltd. and N (the notice parties) and the applicant's competitors in the telecommunications market, contended that their rights would be materially affected by the avoidance of the decision sought to be impugned by the applicant, and applied to be joined in the proceedings. Mr. Justice Herbert said:

"Under its inherent jurisdiction and under the Rules of the Superior Courts 1986 for example Order 15 and Order 84 Rule 22 (6), the Court has extensive powers to join or to hear additional parties or persons. As was stated in the case of **Long v. Crossley** 13 Ch. D. 391 the purpose of those powers is not to ensure that the case is so framed as to be successful. The purpose is to prevent a multiplicity of proceedings and to ensure that all necessary issues and persons are before the Court to enable it 'effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter'.(Order 15 Rule 13 of the Superior Courts, 1986)."

[40] So too reference was also so made to **TSB Private Bank International SA v. Chandra and Another** [1992] 2 All E.R. 245. Here the plaintiff bank which was incorporated in Luxembourg, advanced £1.5m to a British Virgin Islands company in reliance on a written guarantee given by the first defendant. When the company

---

<sup>1</sup> Page 78



later failed to repay the £1.5m, the bank initiated proceedings against the first defendant to enforce payment under the guarantee and obtained a mareva injunction restraining him from removing out of the jurisdiction or otherwise disposing of or dealing with his assets, including his shares in BHL, a United Kingdom company involved in the hotel business of which he was the majority shareholder, and similarly restraining him from dealing with BHL's assets within the jurisdiction, including in particular the proceeds of sale of its restaurant and hotel interests and also a property used by him as a place of residence but purportedly owned by BHL. The Court of its own motion made an order under RSC Ord.15 r 6(2)(b)(ii) directing that BHL be added as a party to the action to ensure that all matters in dispute might be effectually and completely determined and adjudicated upon and granted a mareva injunction against BHL in similar terms to the injunction made against the first defendant in relation to his interest in the company. BHL applied (i) for the writ issued against it to be struck out on the ground that there was no cause of action against it on the guarantee and that therefore it was not a proper party to the proceedings and (ii) for the injunction to be discharged on the ground that court had no jurisdiction to make a mareva injunction against BHL in circumstances where the plaintiff had admitted that it had no cause of action against BHL and that, in any event, the appropriate form of injunction against BHL's assets was an injunction against the first defendant restraining him from directing or procuring the disposal or charge of assets by BHL. Mummery J said:

"In this state of uncertainty about the ownership of 5 Beverley Drive I am of the view that I should not strike out the company as a party to these proceedings. As I have said, I made the order for its joinder of my own motion pursuant to RSC Ord. 15,r 6. I considered that the presence of the company before the court was necessary to ensure that all in dispute in the cause or matter might be effectually and completely determined and adjudicated upon by adding the company as a party. I also considered that the position of the company fell within the broad provisions of Ord.15, r6(2)(b)(ii), namely there could be joined as a party –

'any person between whom and any party to the cause or matter there may exist a question or issue arising out of or in relation to or connected

with any relief claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.'

I also considered when I made the order for the joinder of the company that it should be joined as a party if, as I intended, an injunction was to be made against it, so that it would then have the benefit of the cross-undertaking in damages which the plaintiff was required to give.<sup>2</sup>"

- [41] Counsel said that if the interim injunction was granted, on the authority of **TSB Private Bank International SA v. Chambra and Another** then CAGE was entitled to benefit of the cross undertaking in damages.
- [42] Counsel said that at the heart of the dispute are the VLGs, and questions of law and fact regarding the VLGs would arise for the Court's consideration. As the exclusive operator of the VLGs at Saint Lucia, and as the party with the most intimate knowledge of the workings of the VLGs, and as the party with the most invested financial interest in the VLGs, CAGE was in the best position to respond to the allegations of facts and law raised by the Claimant, including **the** allegation that the VLGs were gaming devices within the meaning of, and regulated by, the Gaming Control Act.
- [43] He said that clearly given the level of investment risks by CAGE, it had the most active interest in seeing that all the proper defences in the proceedings were raised, and that all relevant materials which disproved the Claimant's allegations regarding illegality of the VLGs were adduced before the Court. In addition, the determination of the issues and the orders made by the Court would directly affect CAGE's rights and pecuniary interest.
- [44] Finally, Counsel made it abundantly clear that CAGE had no interest and would not contemplate an application pursuant to Part 56.11 as it did not wish to be heard by way of written brief or oral submissions at the hearing of the substantive matter.

---

<sup>2</sup> Page 252

### The Second Respondent

- [45] The Solicitor General said that the Second Respondent supported the application by CAGE to be joined as a Respondent in the application for judicial review for a proper and full ventilation of all the issues in this matter.

### The Third Respondent

Counsel for the Third Respondent also said that the Third Respondent supported the application by CAGE to be joined in the application for judicial review.

### The Claimant

- [46] The Claimant said that it opposed the application of CAGE on the following grounds:
- (i) CAGE was not a necessary party to the proceedings;
  - (ii) CAGE could not necessarily provide any defence to these type of proceedings;
  - (iii) CAGE has not applied to make submissions by way of written brief;
  - (iv) CAGE does not have a sufficient interest in the subject matter of the claim to be heard.
- [47] Counsel for the Claimant said that its claim was a claim for judicial review, as it regards (i) the failure of the First Respondent to enforce the provisions of the Gaming Control Act, (ii) the decision of the Government of Saint Lucia to authorize the importation, distribution and or operation of gaming devices in Saint Lucia, and (iii) the unlawful importation, distribution and operation of gaming devices by the National Lotteries Authority. Essentially, the matter he said was a public law matter to review the decisions of the Government of Saint Lucia and public authorities on the ground that the Claimant was adversely affected by those decisions which the Claimant claims to be unlawful.

- [48] CAGE, a private company he said had contracted with the Third Respondent under a Contract based on the decision of the Government of Saint Lucia. The Contract purports to be a management contract pursuant to section 5(3) of the National Lotteries Authority Act authorizing CAGE and CAGE by its own admission has stated expressly, that its operations are for the Third Respondent and in doing so it operates and manages the VLTs on behalf of the Third Respondent.
- [49] The Court in reviewing the statutory duty of the First Respondent and its obligations in regulating the industry did not require the assistance or involvement of CAGE therefore CAGE would not be a proper party to the proceedings.
- [50] The Government of Saint Lucia took a decision to allow the operation, distribution and importation of VLTs in Saint Lucia. The Claimant has asked the Court to review this decision and determine whether it is unlawful and improper in view of the Gaming Control Act and the National Lotteries Authority Act. What the Cabinet of Ministers and the Government considered in making the decision is within the knowledge of the Second Respondent and Cabinet of Ministers. The Claimant rejected the notion that CAGE could be an interested party to the proceedings merely because it entered into discussions and negotiations.
- [51] Counsel said that the Claimant seeks declarations as regards whether the VLTs are gaming devices. Declarations are granted to determine questions of law that arise in the course of a judicial review application. The declarations sought by the Claimant are sought alongside the claim that the First Respondent ought to enforce the provisions of the Gaming Control Act. Consequently, the Claimant has sought a declaration that the VLTs are gaming devices. Further, the Claimant seeks a declaration that the importation, distribution and operation of the VLTs by the Third Respondent is unlawful and in breach of the Gaming Control Act and National Lotteries Authority Act.
- [52] The declarations sought are based on interpretation of the law as it relates to gaming devices. CAGE was therefore not a necessary and proper party to the

proceedings as CAGE holds no expertise in interpretation of the legislation and its intention. CAGE claims a pecuniary interest in the proceedings it being the party with a management contract under which it conducts gaming operations on behalf of the Third Respondent.

[53] CAGE, Counsel submitted could not add any defence to the proceedings as it had no separate interest from the Third Respondent it having entered into a Contract with the Third Respondent, the only body authorized by the National Lotteries Authority Act to operate lotteries and the Third Respondent could enter into management contracts for the conduct of the lotteries. CAGE was purporting to operate under such a management contract for and on behalf of the Third Respondent and so could have no separate interest.

[54] Finally, Counsel submitted on the application of CPR 2000 rule 56.11 to CAGE's ability to participate in the judicial review proceedings as a party with sufficient interest.

[55] Given CAGE's strong and unequivocal stance about having no interest in any application under rule 56.11 and CAGE having not asked for an alternative order under this rule, the Court will not make any decision on the applicability of this rule to CAGE.

#### The law

[56] CPR 2000 Part 19 provides for the addition and substitution of parties. Rule 19 provides:

"19.2 (3) The court may add a new party to proceedings without an application if –

(a) it is desirable to add the new party so that the court may resolve all the matters in dispute in the proceedings; or

(b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

(4) ...

19.3 (1) The court may add, substitute or remove a party on or without an application.

(2) An application for permission to add, substitute or remove a party may be made by –

(a) an existing party, or

(b) a person who wishes to become a party.

(3) ...

(4) ...

(5) An order for the addition, substitution or removal of a party must be served on –

(a) all parties to the proceedings;

(b) any party added or substituted; and

(c) any other person affected by the order.

(6) If the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about –

(a) filing and serving the claim form and any statements of case on any new defendant;

(b) serving the relevant documents on the new party; and

(c) the management of the proceedings; and

subject to such directions, rule 19.2(2) applies.

(7) If the –

(a) court makes an order for the addition or substitution of a new defendant; and

(b) claim form is served on the new defendant;

these Rules apply to the new defendant as they apply to any other defendant.”

[57] The National Lotteries Authority Act states:

“4.POWERS AND DUTIES OF THE AUTHORITY

The Authority shall have power to carry out or provide for the operation of lotteries in Saint Lucia.

Without prejudice to the generality of subsection (1) the Authority shall-organize, provide, conduct and control the operation of lotteries in or outside of Saint Lucia either alone or in conjunction with any other companies or organizations in or associate with any other company or organization concerned with the business of lotteries;

...

5.RESPONSIBILITY FOR OPERATING LOTTERIES

(1) The Authority shall be the body responsible for operating lotteries in Saint Lucia.

(2)...

(3) The Authority shall on the advice of the Minister have the power to enter into management contracts with any other entity authorizing that other entity to conduct lottery operations in Saint Lucia.” (My emphasis)

Findings

[58] The Court has no doubt that CAGE LLC and CAGE Holding had discussions with various Ministers of Government, and the representatives of at least one of the Authorities cited as Respondents prior to the Contract with the Third Respondent, and further that CAGE Holding, and CAGE have all spent considerable sums of money establishing the business at Saint Lucia, however, these are not sufficient reasons for the Court to order of joinder as Respondent.

[59] Before the Court gets to the issue of whether the Court ought to consider pursuant to Rule 19 joining CAGE as a Respondent, the Court’s makes two (2) observations about the Contract because as the Court understands the application for joinder, it is from this Contract that all rights, liabilities and responsibilities of CAGE flow.

[60] At the Parties clause of the Contract, the company with whom the Contract is made is CAGE Holding and identified "hereinafter referred to as "CAGE" (Holding). The company is stated to be:

"a company duly incorporated and registered under the Companies Law, Cap 113 of the Laws of Cyprus,...."

And the third recital provides:

"WHEREAS, the NLA desires that CAGE (Holding) develops, supplies and operates VLTs, on an exclusive basis for the NLA consistent with the terms and conditions of the "St. Lucia Business Plan (Revised)" (hereinafter referred to as the "Plan") as provided by CAGE to the NLA that contemplates the installation of up to 1,000 video lottery terminals on Saint Lucia."

Some definitions and clauses for consideration are:

" "Operator" A person contracted under a Professional Services Contract to operate the Online Video Lottery System for the NLA."

"Service Fee(s). "The fees to be paid to the NLA by the Operator pursuant to Section 3.1 of this Professional Services Contract."

"Section 1.2 Exclusive Designation of Video Lottery Operator

The Operator shall have exclusive authority to design, install, implement, administer, deploy and operate the Online Video Lottery System. The NLA shall not contract for or purchase other online services, material or equipment for use as part of, or adjunct to, the Online Video System or establish another Online Video Lottery processing system during the original ten(10) year Term of this Professional Services Contract or any extensions or renewals as contemplated hereunder without the express prior approval in writing, of the Operator...

Section 3.1 Payments to the NLA. The NLA shall receive, during the initial ten(10) year Term of this Agreement, after 250 VLTs are installed or by 31st March 2011, whichever is sooner, a "Service Fee" equal to the greater of EC\$250,627.00 ....per month or 20% (twenty percent) of Net Income from Operations calculated on a monthly basis, which shall be paid by the 15th of the following month. The same fee shall apply during the additional ten(10) year extension Term. In addition, the Operator shall,



during the first five (5) years of operation make an annual Good Cause Payment in the amount of EC\$375,000.00...

Section 4.11 Operator's Loyalty to the NLA. The Operator acknowledges and agrees on behalf of itself, and any affiliate of the Operator providing services to the NLA, and any of its directors, officers, and employees, that in performing their professional services pursuant to this Contract, each shall exhibit complete loyalty towards the NLA and shall have no adverse or Conflict of Interest, as specified in the following provisions below. This includes the Operator's continuous obligation to disclose to the NLA all circumstances of its relations with other clients and third parties which could have improperly influenced the NLA when executing this Contract or which could reasonably be expected to materially and adversely affect the operation of the VLT System while the offending conditions remain in effect.

Section 4.14 Affiliate Transactions. The NLA acknowledges and agrees that in performing the services the Operator may contract with third parties in which the Operator has a beneficial and or economic interest including subsidiaries and/or affiliates of the Operator.

Section 4.16 No Other Contract. The Operator certifies that it does not have any other contracts with the Government, its agencies, corporations or municipalities and will immediately disclose in writing to the NLA any contract between the Operator and other government authorities and shall immediately notify the NLA in writing upon obtaining any necessary waivers. Any such future Contract shall not conflict with the obligations of the Operator under this Contract.

Section 6.3 Cooperation of the Parties. The Operator and the NLA agree to cooperate fully, to work in good faith and mutually to assist each other in the performance of the Contract. For this purpose, the parties will meet to resolve problems associated with the Contract. Neither party will unreasonably delay, or condition its approval of any act or request of the other to which its approval is necessary or desirable."

[61] While the Court during the hearing was made to understand that CAGE is the entity carrying out the local operations at Saint Lucia, the definition of "Operator" has confused the Court somewhat as the Court was led to understand that the Contract submitted was the only Professional Services Contract, and in this Contract the only party is CAGE Holding. There were no other Professional Services Contract laid before the Court. There has also been no other contract whatsoever laid before the Court showing the Applicant, CAGE as a party or

Operator. The problem as the Court sees it is that the Operator is said to be giving undertakings but it/he is not a signatory to the Contract.

[62] Secondly, on review, it appears to the Court that CAGE Holding is required to be registered as an external company at Saint Lucia pursuant to the Companies Act Cap. 13.01 section 338 et seq. once certain conditions are met. Section 338 et seq. provide:

“338. External companies carrying on business

An external company carries on business within Saint Lucia—

- (a) if business of the company is regularly transacted from an office in Saint Lucia established or used for the purpose;
- (b) if the company establishes or uses a share transfer or share registration office in Saint Lucia;
- (c) if the company owns, possesses or uses assets situated in Saint Lucia for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Saint Lucia or not.

339. Exceptions

This Division does not apply to an external company that is exempted from this Division by an order of the Attorney General published in the Gazette.

340. Prohibition

- (1) An external company shall not begin or carry on business in Saint Lucia until it is registered under this Act.”

[63] Having regard to the overall contents of the Contract and in particular section 338 (b) and (c) of the Companies Act, it would appear to the Court that CAGE Holding is doing business at Saint Lucia and therefore ought to have been registered as an external company unless exempted by publication in the Gazette before executing the Contract. The Court was not informed of such exemption. Counsel for CAGE

went to great lengths to demonstrate how much business was being done at Saint Lucia by CAGE and with payments to the Third Respondent being made pursuant to the Contract and Mr. De La Cruz did say that CAGE was a wholly owned subsidiary of CAGE Holding. If CAGE Holding is not registered pursuant to the Companies Act then that's an issue for consideration on CAGE's application for joinder it being grounded in the Contract.

[64] If the Court is correct that CAGE Holding ought be registered as an external company before entering the Contract, then on the facts before the Court, CAGE is not in a position to pursue its application for joinder since its grounds its application for joinder in the Contract which could not have be made until the CAGE Holding was registered as an external company at Saint Lucia.

[65] In the event that the Court is wrong, the goes on to further consider CAGE's application.

[66] The net effect of CAGE's submissions is that it matter not whether the proceedings are judicial review proceedings or between two (2) individuals, the principles of joinder at rule 19 were applicable to both situations.

[67] At the end of CAGE's submissions, the Court asked Counsel three (3) questions and they were:

(1) Hypothetically, if say the Court permitted CAGE to be joined as a Respondent, then looking at the grounds which are usually raised in judicial review proceedings, which would he consider to be the appropriate ground for the Claimant to raise against CAGE?

(2) Hypothetically, if say the Court in the substantive matter did not find favour with the submissions of CAGE then what type of relief could the Court order against CAGE?

(3) Could there be judicial review proceedings between private citizens/private corporations?

- [68] In answer to the first question, Counsel said that looking at the assertion that the VLTs were in breach of the Gaming Control Act, then CAGE was entitled to say the Gaming Control Act does not apply to it.
- [69] In answer to the second question, Counsel said that if the Court were to find that the Claimant had made out its case and the VLTs were in breach of the Gaming Control Act then the Court would have a right to make the declarations sought by the Claimant and make an order declaring CAGE was acting without authority and he added that in any event the Claimant was asking for the same orders against CAGE although CAGE was not a party.
- [70] In answer to the third question, Counsel said "No" but what was before the Court was a claim between private citizens and the private citizen was allowed to protect his interest. Courts he said had allowed private citizens into proceedings to protect their interest.
- [71] The same questions were posed to Counsel for the Claimant. He said that the questions struck at the heart of the matter in that none of the relief granted in judicial review proceedings would be applicable to CAGE
- [72] In relation to the second question, he said that Counsel's answer showed a clear misunderstanding of the proceedings brought by the Claimant. CAGE did not need to be a party for the orders to be made against it. The orders and declarations would be made against the First Respondent and the Third Respondent. Pursuant to section 5 of the National Lotteries Authority Act, Third Respondent is the only body at Saint Lucia authorized to operate lotteries and pursuant to section 5(3) it could give a third party a contract to operate lotteries, and this could only mean on its behalf since it was the only authorized body.
- [73] He said that pursuant to section 4 of the National Lotteries Authority Act, it was the Third Respondent which must retain control over lotteries and could not simply rubberstamp.

[74] CAGE he said had no part in these public law proceedings and which proceedings centered around the legality of the decision of the Third Respondent to engage in the operation of VLTS. He referred to the Contract between the Third Respondent and CAGE Holding page 13 section 1.5(a) which provides:

"Section 1.5 Representations, Warranties, and Covenants of the NLA.

The NLA hereby represents, warrants, and covenants the following during the Term of this Professional Services Contract:

(a) Existence and Powers. The NLA has the full legal right, power and authority to execute, deliver and perform under this Professional Services Contract in accordance with the Laws of Saint Lucia."

Section 1.5 (a) he said was the issue being questioned in the proceedings and CAGE had it recourse under the Contract to the Third Respondent.

[75] Counsel for CAGE is correct on the principles and powers of the Court when considering an application pursuant to CPR 2000 Part 19. The Court, however, is not convinced that those principles apply in the present situation where as here (a) the matter is not a dispute per se but rather the review of a decision, (b) CAGE's alleged right to participate is stated to arise under a private contract, and (c) CAGE has no dispute with the Claimant or vice versa, CAGE has no dispute with any of the Respondents, and there are no liability issues arising between CAGE and the Claimant. A dispute or liability consideration appear to be a necessary element for consideration in an application for joinder.

[76] The Court does not believe that the question of joinder of CAGE in these judicial review proceedings is as simple as Counsel has made it out to be. CAGE by its application is seeking to force the Claimant to draw pleadings against it in these judicial review proceedings. The position CAGE seeks by joinder as a Respondent is very different to that of a Claimant in a civil suit. Looking at the authorities on judicial review the Court has to ask itself the following questions:

(a) Is CAGE a public body? The answer is undoubtedly No.

(b) Does CAGE have legal authority in these proceedings? Again the answer is No, it has merely rights and duties under a private contract with the Third Respondent.

(c) Can the Claimant seek judicial review on the basis of at least one of the grounds that the Court recognizes as acceptable for the purposes of judicial review e.g. illegality, procedural impropriety and so forth? Once again the answer is No.

[77] This Court believes that it finds support for the questions posed in the following authorities. Michael Fordham Q.C.<sup>3</sup> states:

“2.1 Supervising public authorities. Judicial review is a central control mechanism of administrative law (public law), by which the judiciary take the historic constitutional responsibility of protecting against abuses of power by public authorities. It is an important safeguard which promotes the public interest, assists public bodies to act lawfully and ensures that they are not above the law, and protects the rights and interest of those affected by the exercise of public authority power. This special supervisory jurisdiction is different from both (1) ordinary (adversarial) litigation between private parties and (2) an appeal (rehearing) on the merits. The question is not whether the judge disagrees with what the public body has done, but whether there is some recognizable public law wrong....” (My emphasis)

(C ) SECURING OBEDIENCE TO LAW. Sheffield City Council v. Smart [2002] EWCA Civ 4 [2002] HLR 639 at [20] (judicial review as “the means by which the exercise of power by any public authority is strictly limited to the scope and purposes of the power’s grant, and subjected also to the common law’s insistence on rationality and fairness.”(My emphasis)

2.1.4 Supervisory jurisdiction in a nutshell. Reid v. Secretary of State for Scotland [1999] 2 AC 512, 541F-542A (Lord Clyde:” Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or

---

<sup>3</sup> Fordham Q. C., Michael, Judicial Review Handbook, 5<sup>th</sup> edition

through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconception of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in a case of review as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence.”<sup>4</sup> (My emphasis)

- [78] At no time has CAGE held itself out as a body exercising public law functions. See *R v. Panel on Take-overs and Mergers, ex p. Datafin Plc.*<sup>5</sup>
- [79] CAGE’s focus has been on the possible relief that might be granted under the Claimant’s interim application as well as at the substantive hearing. The Court to the contrary believes that its focus must be on the three (3) grounds set out for review. The Court is of the view that only the Respondents can answer the grounds raised. CAGE does not claim to have been part of the decision making process.
- [80] Looking ahead to the substantive hearing of the matter, as this Court understands its duty, what the Court will be first called upon to do is to look at the facts and determine whether the public law procedure has been followed and the manner in which the public authorities have exercised their functions. Always looking for application of the general principles. The Court believes that only the present Respondents can assist the Court with this determination on the decisions raised in the Claimant’s fixed date claim. It is as Laws J said in ***R v. Somerset County Council ex parte Fewings***<sup>6</sup> after Counsel for the authority had submitted that another factor that the court should consider was that the council was democratically elected and that it should represent the feelings, including the ethical perceptions, of its electorate:

“I do not sit here as political philosopher; what I am concerned with is an altogether tighter question, namely whether the power delegated to the

---

<sup>4</sup> Fordham Q.C., Michael, *Judicial Review Handbook*, 5<sup>th</sup> edition Pages 7 - 8

<sup>5</sup> [1987] Q.B. 815 at 847 - 848

<sup>6</sup> [1995] 1 All E. R 513

elected local authority by Parliament is wide enough to allow what was done in this case.”

[81] Looking at the cases submitted by CAGE, the Court believes that it can distinguish them from CAGE’s application. While as stated prior the Court accepts the general principle that all parties where possible should be joined in proceedings to save costs and to facilitate the fullest hearing possible before a decision is rendered, the Court has observed this, (a) in the case of **Denis O’Keefe**, Radio Tara was the direct applicant to the public authority for planning permission and it is this planning permission which it was sought to be challenged; (b) in the case of **Eircom plc**, E Ltd. and N were notice parties and they did not seek to be joined as Respondents, and they were also subject to licences issued by the same authority, Director of Telecommunications, this would suggest without more that at least under the CPR 2000 Part 56.11 it would give them sufficient interest; this is not the case of CAGE which has a private contract and is seeking to bring its private contract rights into a judicial review proceeding; (c) as the Court understands, **TSB Private Bank International SA** was used as the authority to show that CAGE was entitled to benefit from any undertaking required of the Claimant if successful in its application for an interim injunction and other interim relief. As the Court understands the authorities, it is not a given that in every instance that the Court grants interim relief in judicial review proceedings that the Court will seek an undertaking in damages. Michael Fordham Q.C said:

#### “20.2.2 Special considerations

(D) SPECIAL DIFFICULTIES AS TO ADEQUACY OF DAMAGES. **R v. Secretary of State for Transport, ex p. Factortame Ltd. (No.2)** [1991] 1 AC 603, 672 -673 B (Lord Goff, referring to problems in seeking to resolve public law cases at the “adequacy of damages” because the Claimant has “no general right to indemnity by reason of damage suffered through invalid administrative action” and (the) defendant “cannot normally be



protected by a remedy in damages because it will itself have suffered none...

20.2.3 Claimant's cross undertaking in damages...**R v. Inspectorate of Pollution, ex p Greenpeace Ltd.** [1994] 1 WLR 570, 574 H (cross undertaking "essentially a matter for the discretion of the judge").

[82] The Court concurs with Counsel for the Claimant, that given the thrust of CAGE's submission, CAGE is seeking to be a Respondent to defend and protect its financial interest it having as alleged invested considerable sums of money in its business at Saint Lucia, all interest pursued pursuant to CAGE's private contract with the Third Respondent. This though is not the purpose of judicial review proceedings.

[83] The Court could find no authority where as here, CAGE seeks to be added as a Respondent, although not a public authority, and to do so for the sole purpose as stated of defending its rights, rights obtained pursuant to its private contract with the Third Respondent. Indeed no similar case was furnished by CAGE.

[84] For all the reasons stated, the Court dismisses CAGE's application for joinder as Respondent pursuant to CPR 2000 Part 19.

[85] Court's order:

(1) CAGE's application for joinder as a Respondent pursuant to CPR 2000 Part 19 is dismissed.

(2) Costs to the Claimant in the sum of \$7,500.00 payable on or before December 31<sup>st</sup> 2012.

Rosalyn E. Wilkinson  
High Court Judge