EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SUIT NO: NEVHCV2016/0014

In the matter of Sections 3, 5, 20 and 21 of the Nevis Physical Planning and Control Ordinance Cap 6: 09 (N)

BETWEEN:

Anne Hendricks Bass	**Applicant**
And	
Director of Physical Planning	**1st Respondent**
And	
Development Advisory Committee	**2nd Respondent**

Appearances:

Mr. Damien Kelsick with Mr. Garth Wilkin for the Applicant

Ms. Jean Dyer with Mrs.Cleone Stapleton – Simmonds for the Respondents

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2016: February 02
2016: April

DECISION

[1] **WILLIAMS, J.:** This matter is before this court by a Notice of Application for Leave for Judicial Review and a stay of proceedings.

[2] The Applicant Anne Hendricks Bass has applied for

(a) Leave to apply for Judicial Review in particular to obtain an Order of Certiorari to remove into the High Court and to quash;

(b) The decisions of the 1st Respondent and or the 2nd Respondent made in or about April 2015 granting permission to Caribbean Development Consultant Ltd to construct a 17 building,51 unit development together with a guard house, restaurant, two parking lots, badminton courts, and a volleyball site on 4.4 acres of coastal land at Liburd Hill , St. James, Nevis, which is referred to as the HTRIP Candy Resort Villa Development and

(c) The decision if any to waive the requirement for Caribbean Development Consultant Ltd to provide a complete and proper Environmental Impact Assessment as required by Section 20 (2) of the Nevis Physical Planning and Development Control Ordinance Cap 6:09 (N).

[3] A stay of the said planning permission until the final determination of this matter.

[4] The grounds of the Applicant's application are stated at paragraphs A to W of the Applicant's Application filed on the 18th January 2016 with the supporting Affidavits of Anne Bass, Sorell E Negro Esq and Earl Sargeant.

[5] The Application for leave to file for Judicial review came up for hearing on the 2nd February 2016. At that hearing Counsel for the Respondents Ms Jean Dyer raised the point in limine as to whether or not the Applicant's action is statute barred by virtue of Section 2 (1) (a) of the Public Authorities Protection Act Cap 5:13. The decision was made by the Respondents on the 7th April 2015, and the Applicant's proceedings were commenced on the 18th January 2016 some nine months later.

[6] Learned Counsel for the Applicant, Mr Damien Kelsick contended in his written submissions that Section 2 (1) (a) of the Public Authorities Protection Act is not applicable to Judicial review proceedings and therefore it cannot bar the captioned proceedings.

(b) Further and in the alternative, the decisions of the 1st Respondents and or the 2nd Respondents made in or about April 2015 were a nullity being made in breach of Section 20 (3) of the Nevis Physical Planning and Development Control Ordinance Cap. 6:09 (N) and therefore Section 2 (1) (a) of the Public Authorities Protection Act does not apply to the captioned proceedings.

[7] Counsel for the Applicant contends that the core issue of the Respondents "point in limine" is whether the Public Authorities Act is applicable to Judicial review Proceedings.

The section states as follows:

1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act, or any public duty or authority or of any alleged neglect or default in the execution of any such Act, duty or authority, the following provisions shall have effect.

a) The action, prosecution, or proceedings shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of or, in case of the continuance of injury or damage within six months next after the ceasing thereof.

[8] Learned Counsel for the Applicant submits that a good starting point is the Principle of Law applicable to statutory interpretation, that is the "Ejusdem generis" rule, whereby words associated in the text with more limited words are taken to be restricted by application to matters of the same limited character."

[9] Counsel for the Applicant submitted that the words" other proceeding "is limited to such types of proceedings as "actions" and "prosecutions" and that the language of Section 2 (1) (a) of the Public

Authorities Protection Act (PAP) is identical to that of the English Public Authorities Protection Act 1893. Counsel also referred to the decision in **Freeborn vs Leemung,**[1] **.**

[10] Learned Counsel also referred to the dicta of Joseph Olivetti. J in the case of **Virgin Islands Environmental Council vs The Attorney General et al** [2] where she stated that " most of the English speaking Countries have inherited the former English Public Authorities Protection Act 1893 for better or worse"

Counsel for the Applicant also vehemently disagreed with the submission of Counsel for the Respondents who argued that the term "action" after consideration of the Interpretation Act Cap 11:02 and part 8 of the CPR 2000 evolves into any claim under part 8 of the CPR, and therefore the Public Authorities Protection Act applies to any Judicial Review Claim.

[11] Counsel for the Applicant referred the court to the Judgment of Morrison JA in the case of **Froyland Gilharry Sr. vs Transport Board et al** [3] which Counsel contended mirrored his oral submissions to the Court. The relevant parts of the judgment of Morrison JA was referred to in paragraphs 15 & 16 of Counsel's written submissions.

[12] At paragraph 16, Counsel highlights the Judgment of Morrison JA as follows "**the question whether Section 3 of the Belizean Public Authorities Protection Act applies to such proceedings is at the end of the day essentially one of the construction, taking into account all relevant factors, such as context, history, previous authority and the statutory caution that the right of access**

[1] [1929] 1K.3 160.
[2] HCVAP 2007/0185
[3] Civil Appeal 32/2011 – Court of Appeal - Belize

to the Courts for the purposes of Judicial review can only be abrogated by clarity of intent and of language."

[13] Learned Counsel for the Applicant contends that Section 2 (1) (a) of the Public Authorities Protection Act of St.Kitts and Nevis contains no such clear intent or language or that the draconian time limit contained therein applies to Judicial review proceedings.

[14] Counsel for the Applicant cited the case of **R vs Port of London Authority, Ex parte Hynoch Ltd** [4] where Banks L.J opined that the words "action", prosecution or other proceeding" were not intended to include a prerogative writ calling upon a Public Authority to perform a Public duty".

[15] Counsel also referred the Court to the Privy Council Case of **Blanchfield & Ors vs Attorney General of Trinidad and Tobago** [5] and **Froyland Gilharry Sr. vs Transport Board et al** and submitted that the reasoning of the Court in these cases should be highly persuasive to this Court; as it is the accurate legal position on a proper interpretation of the **Public Authorities Protection Act.**

[16] Counsel for the Applicant argues that the statements of Joseph – Olivetti J. and Barrow JA in the **Quorum Island** case were not binding on this Court, since those Courts were not asked to deal with the issue that is being raised in the case at Bar.

Counsel asks that this Court reject as errant, the statements of the learned Judges, and consider the thorough and sound decision of **Morrison JA in Froyland Ghilharry Sr vs Transport Board et al.**

[4] [1919] 1 KB 176
[5] [2002] UKPC 1

[17] Learned Counsel for the Applicant also referred the Court to the "Nullity Argument "that is when an act or decision of a Public officer is ultra vires and thereby a nullity, the state cannot claim protection of the Public Authorities Protection Act.

[18] Counsel cited the decision of the Court of Appeal of the Eastern Caribbean Supreme Court in **Public Service Commission vs Davis** [6] where the Court of Appeal held that the decision of the Public Service Commission was void because a precondition to its exercise was not satisfied, and therefore it was not entitled to the protection of the **Public Authorities Protection Act**.

[19] Counsel for the Applicant submits that the Director of Physical Planning and the Development Advisory Committee acted without jurisdiction when they made the decision in April 2015 to grant permission to Development Consultant Ltd to construct the Candy Resort Villa Development without an Environmental Impact Assessment for the materially revised plans, as required by Section 20 (3) of the Nevis Planning and Development Ordinance.

Counsel contends that the Respondents cannot therefore claim protection of the Public Authorities Protection Act.

[20] Counsel also cited Section 20 (3) of the Nevis Physical Planning and Development Control Ordinance and argues that the actions and decisions of the Director of Physical Planning and the Development Advisory Committee were a nullity, because of their failure to examine and take into account an Environmental Impact assessment for the development in its altered design.

Consequently the **Public Authorities Protection Act** did not apply.

[6] [1984] 33 WIR 112

[21] In relation to the Respondents contention that there had been unreasonable delay by the Applicant in filing proceedings for Judicial review, Counsel for the Applicant referred the Court to the case of **Roland Browne vs The Public Service Commission**[7].

[22] Counsel also referred to the 3rd Affidavit of the Applicant Anne Hendrickson Bass at paragraph 44; and to his written submissions at paragraphs 53 (a) (b) (c) to 59 as reason for the delay in filing an Application for Judicial review.

[23] Counsel referred to the decision in **John West vs The Labour Commissioner**[8] where a seven month period between the challenged decision and the Application for Judicial review was found to be reasonable by the Court.

[24] In relation to the issue of "detriment to good Administration" Counsel for the Applicant submits that there cannot be any detriment caused if the Applicant is granted leave to pursue Judicial review.

[25] Counsel for the Applicant submits that on a balance of hardship or prejudice the safety and preservation of the Environment should outweigh the financial gain for the developer and its related entities and therefore there is no hardship or prejudice to any party once Judicial notice is taken of the primacy of the Environment and statutory notice of the Nevis Island Assembly's mandatory requirement of an Environmental Impact Assessment before approval is granted for projects.

The Respondents Case

Preliminary issue

[26] (a) Whether the Applicant's action is statute barred by virtue of Section 2 (1) (a) of the Public Authorities Protection Act Chapter 5:13.

[7] HCVAP 2010/0023
[8] SVGHC 2014/0025

[27] Learned Counsels for the Respondents, Ms Jean Dyer and Mrs Cleone Simmonds in written submissions contended that the Applicant's claim is statute barred by Section 2 (1) (a) of the **Public Authorities Protection Act** as the Application for Judicial review was filed on the 18th January 2016 which was outside the six month limitation period prescribed by the Act for commencing an action, to challenge the Act, neglect or default of a Public authority.

[28] Counsels for the Respondents in written submissions recites Section 2 (1) (a) of the Public Authorities Protection Act (PAP) and referred the Court to the BVI case of Virgin **Islands Environmental Council vs The Attorney General et al**[9] and the appeal case of **Quorum Island (BVI) Ltd et al vs Virgin Islands Environmental Council**[10]

[29] Counsels for the Respondents have submitted that in determining the preliminary point, the Court must consider

i) Whether the Applicant's Judicial review claim falls within the scope of Section 2 (1) (a) of the Public Authorities Protection Act.

ii) If so whether it was commenced within the six month period of the acts of the Public Authority complained of.

[30] Learned Counsels contend that a useful starting point is for the court to construe Section 2 (1) (a) of the St. Kitts and Nevis Public Authorities Protection Act which is identical to Section 2 of the British Virgin Island Act.

[31] Counsel argues that as in the **BVI Public Authorities Protection Act** , the terms "action" , "prosecution" " or other proceeding" are not defined in the Act; however the Interpretation Act of

[9] BVIHCV 2007/0185 (Judgment of Joseph Olivetti J.)
[10] HCVAP 2008/004 (Barrow JA)

St.Kitts and Nevis Cap 1:02 defines "action" as including "claim" as defined under the CPR 2000. Therefore Counsel submits that this definition is applicable to the **Public Authorities Protection Act** by virtue of Section 2 (1) of the **Interpretation Act** which provides that " Law" includes any "Act Ordinance, Act of the Imperial Parliament and any subsidiary legislation or rule of Court made or given under the authority of any law"

Act is defined as including "Act or private enactment of the National Assembly and any subsidiary legislation made under the authority of any enactment".

Counsel submits further that as in the case of the **Virgin Island Environment Council Case,** the combined effect of these provisions is that the **Public Authorities Protection Act** is a "Law" and the definition of " action" in Section 2 (1) of the Interpretation Act applies to Section 2 (1) (a) of the Public Authorities Protection Act.

[32] Learned Counsel Ms Dyer therefore is adamant in her submissions that the six month limitation period stipulated by Section 2 (1) (a) of the Public Authorities Protection Act applies to the Applicant's action; and is therefore statue barred under the Act.

[33] Counsel for the Respondents also submits that Counsel for the Applicant's contention that the dictum in **Quorum** is obiter, is patently flawed and referred to the Judgment of **Baptiste J A** in the case of **Fire Service Association vs Public Service Commission et al** [11] and his reference to **Quorum.** Learned Counsel argues that the case of **Quorum** was concerned with the question of whether an Application for Judicial review was statute barred under the **BVI Public Authorities Protection Act**,

[11] SLUHCVAP 2010/0013

the Application for leave to apply for Judicial Review having been filed on the last day of the six month period prescribed by the Act.

The Court of Appeal found that the Act applied and then considered whether the BVI Environmental Council's claim for Judicial review was commenced in time as required by the Public Authorities Protection Act.

[34] Counsel for the Respondents argues that the Respondents are relying on the legal principle laid down in **Quorum** that **Section 2 (1) (a) of the Public Authorities Protection Act requires that proceedings must be commenced within the specified time** **(my emphasis)**

[35] In relation to Counsel for the Applicant's submission that the Respondents point in limine is premature, Learned Counsel Ms Dyer submitted that Rule 56.5 (1) of the CPR 2000 provides that "In addition to any time limit imposed by any enactment, the Judge may refuse leave… in any case in which the Judge considers that there has been unreasonable delay before making the application".

[36] Counsel contends the Respondents need not wait until the Applicant files a Claim for Judicial Review to raise the limitation point; Counsel referred to the case of: **Virgin Islands Environmental Council vs The Attorney General et al** per Hariprashad – Charles J. where she stated

"That the point in limine if upheld may preclude further consideration of the substantive issues in the Applicant's intended claim for Judicial review".

[37] Counsel for the Respondents referred to Counsel's contention that the limitation should be raised as a Defence, and states that the issue of Estoppel could only be determined at a Trial. Counsel further

referred the Court to the case of **R vs East Sussex CC ex pater Reprotech (Pebsham) Ltd** [12] where the House of Lords opined that it was unhelpful to introduce private law concepts of Estoppel into planning law.

[38] Learned Counsel argues that the information provided by the Applicant in her Affidavit at paragraph 37 speaks to the fact that the Applicant was notified that the land was not being sold on the 29th September 2015, and was still within the limitation period to proceed with her action. However according to Counsel the Applicant did nothing for four months after the prospect of buying the lands were lost.

Court Analysis and Findings

[39] The issue for the Court's determination is whether Section 2 (1) (a) of the Public Authorities Protection Act of St. Kitts and Nevis is applicable to the Applicant's action for Judicial review and renders the action statute barred.

[40] Section 2 (1) (a) of the Public Authorities Protection Act of St.Kitts and Nevis has already been defined in paragraph 7 (1) of this Judgment.

[41] A similar issue was considered by the Eastern Caribbean Supreme Court by Joseph Olivetti J in the BVI case of **Virgin Islands Environmental Council vs The Attorney General** where the learned Judge at paragraphs 28- 30 of her Judgment stated that the terms "action", "prosecution" and "other proceedings" are not defined by the Act. However the definition of "action" contained in Section 42 of the Interpretation Act is applicable by virtue of Section 2 and 3 of the Interpretation Act.

[12] [2002] UKHL8

The learned Judge held that "Action" in Section 2 (a) means a Civil Claim or Civil Proceedings commenced as prescribed by CPR or by the rules of Court. Thus, only an action so commenced and filed within the six months period can be effective to stop time running against a public authority".

The learned Judge also held that leave to apply for Judicial review is the first stage of an Application for Judicial review, and that an Application for leave is to be regarded as the commencement of the action for the purposes of Section 2 (a) of the Act.

[42] On appeal against the decision, the Court of Appeal dismissed the appeal and held (1) that an Application for leave to apply for Judicial review is a proceeding within the meaning of Section 2 (a) of the BVI Act.

Section 2 (a) the BVI Act does not require that an "Action" be commenced, but simply requires that whatever is the manner prescribed by the Rules of Court for a person to commence proceedings to obtain the Court order that he seeks, the proceedings **must be commenced within the specified time.**

[43] Counsel for the Applicant referred the Court to the case from the Court of Appeal of Belize of **Froylan Gilharry vs Transport Board et al** [13] where Morrison JA concluded that the **Public Authorities Protection** Act of Belize does not apply either on principle or on authority to applications for Judicial review.

However at paragraphs 67, 72, and 74 of his Judgment, Morrison JA is pellucid in his reasoning. He states as follows

[13] Civil Appeal No 32 of 2011

"In my Judgment, there is nothing in the language of the **PAP Act** to compel an affirmative answer to this question and indeed there are several indicia to the contrary"

" In the first place the actual language of Section 3 (1) and (2) " No writ shall be sued against " the cause of action", no verdict shall be given for the Plaintiff is plainly more appropriate to an action between disputing parties to enforce private rights than to an Application to the Court to review the conduct of a Public body.

" The same point can be made about Section 5" –" If the Plaintiff becomes non- suited or discontinues the action, or if upon a verdict or an application to strike out the Plaintiff's Statement of Claim on the ground that it discloses no reasonable cause of action, Judgment is given against the Plaintiff; and Section 7 (" if the Court or Jury shall give a verdict for the Defendant" the Defendant may by leave of the Court, at any time before issue joined, pay money into Court as in other actions"

[44] I have compared the language of Section 3 of the **Belize Public Authorities Protection Act** and Section 2 of the **St. Kitts and Nevis Public Authorities Protection Act** and in my respectful view I can find no similarity in language.

The Court of Appeal in the **Fire Service Association** case also held that Section 2 of the BVI Public Authorities Protection Act (which is similar in language) to Section 2 (1) (a) of the St. Kitts and Nevis Act is of far wider in scope than Article 28 of the Civil Code of St. Lucia.

[45] Further Morrison J.A at paragraph 71 of his Judgment in **Froylan Gilharry** provides greater clarity for his reasoning in the case and states

" The question whether Section 3 of the Public Authorities Protection Act applies to Judicial proceedings **is at the end of the day essentially one of construction, taking into account all**

relevant factors, such as context, history, previous authority and the salutary caution that the right of access to the Courts for the purposes of Judicial review can only be abrogated by clarity of intent and of language". (My emphasis)

[46] Morrison J A also found that:

"Section 6 of the **Public Authorities Protection Act** invites special attention in this context. The various references to a "verdict" being obtained against the public authority, the "cause" being "tried" and to: Damages" which was certainly not a remedy available on Applications for Prerogative Orders in 1884 when the Public Authorities Protection Act was first enacted, are all additional indicia that the Act was not intended to apply to applications for such orders.

[47] In my respectful opinion again, there is no such language or indicia in the **St. Kitts and Nevis Public Authorities Protection Act** which is present in the Belize Act and which compelled the learned Morrison J A to arrive at the conclusion that he did.

[48] In fact on a closer reading of the **Public Authorities Protection Act of St. Kitts and Nevis** at Section 2 (1) (c) it appears that proceedings can also be commenced for Damages.

I am fortified in my opinion that there is no provision or language in the **Public Authorities Protection Act of St. Kitts and Nevis** which was intended as a bar to Judicial review proceedings, and I endorse and adopt the reasoning of the learned Barrow. J. A in the binding authority of **Quorum Islands (BVI) Ltd case** where he stated that

1) "Proceeding" is a word of the greatest possible scope in that it includes, but is not limited to action, cause or matter. An Application to the Court is a proceeding and is commenced when the Application is filed.

2) An Application for Judicial review is therefore a proceeding within the meaning of Section 2 (a) of the Act.

3) Section 2 (a) of the act does not require that an " Action" be commenced, but simply requires that whatever is the manner prescribed by rules of the Court for a person to commence proceedings to obtain the Court order that he seeks **the proceedings must be commenced with the specified time . (My emphasis)**

[49] In this case at Bar, the Applicant filed an Application for Judicial review on the 18th January 2016, and the decision of the Director of Physical Planning was made on the 7th April 2015 some nine months later and outside the limitation period prescribed by Section (2) of the **Public Authorities Protection Act of St. Kitts and Nevis.**

The **Froyland Gilharry case** in my opinion is of persuasive authority but does not fall squarely within the facts of this matter and is easily distinguishable in that the **Belize Public Authorities Protection Act** is different in language and context from the **St. Kitts and Nevis Public Authorities Protection Act** for the reasons I have already given and does not apply to this matter.

As a matter of clarity I am of the further opinion that the **Public Authorities Protection Act of St.Kitts and Nevis** is applicable to Judicial review proceedings; The Applicants reasons for the delay in applying for Judicial review are frivolous and unacceptable, and I do not attach much weight to them. I also do not consider that the point in limine brought by Counsels for the Respondents is premature and adopt the reasoning of Hariprashad – Charles J in the case of **Virgin Islands Environmental Council vs The Attorney General et al** at paragraph 12 of her Judgment and

uphold the submission from Counsel for the Respondents consequently my decision will preclude any further consideration of the substantive issues in the Applicant's claim for Judicial review.

The Nullity Argument

[50] Learned Counsel for the Applicant submitted that when an act or decision of a public officer is "ultra vires" and therefore a nullity, the state cannot claim the protection of the **Public Authorities Protection Act.**

[51] Counsel referred the Court to the case from the Court of Appeal of the Eastern Caribbean States in **Public Service Commission vs Davis** [14] where Robotham J. A expressed the principle as follows

"It is the duty of the Court to attribute autonomy of decision to Tribunals when they act within their designate area. On the other hand the Court must also ensure that the limits of that area which have been prescribed for them are observed".

[52] Counsel for the Applicant submitted further that the Director of Physical Planning and / or the Development Advisory Committee acted without Jurisdiction when they made the decision in April 2015 to grant permission to construct Candy Resort Villa Development without an Environmental Impact Assessment (E.I.A) contrary to Section 20 (2) of **the Nevis Physical Planning & Development Control Ordinance.**

[53] Counsel contended that the Director of Planning and/ or the Development Advisory Committee could only have acted after considering a proper Environmental Impact Assessment and by purporting to do otherwise her/ their decision was a nullity.

[14] [1984] 33 WIR 112

[54] Counsel argues in that respect, the Respondents cannot claim protection of the **Public Authorities Protection Act.**

[55] Counsel for the Respondents Ms Dyer submit that the decision in **Public Service Commission vs Davis** is distinguishable from the case at bar in that it turned on the fact that the Public Service Commission had acted in breach of a condition precedent to its assumption of jurisdiction and having improperly and / or prematurely assumed jurisdiction, it failed to follow its own procedure and completely ignored the rules of Natural Justice.

[56] Counsel submits further that according to Robotham J A , it is necessary to examine closely the procedural requirement or statutory provision which has been allegedly breached with a view to seeing whether it is to be regarded as mandatory in which case disobedience to it would make the decision void or at least voidable without affecting the substance of the decision or its validity.

[57] Learned Counsel submit Sections 20 and 21 of the **Nevis Physical Planning and Development Control Ordinance** determine whether or not to grant physical permission. Counsel contends that Section 20 of the said Act is not drafted in mandatory terms and gives the Director of Physical Planning a discretion as to whether or not to require an Environmental Impact Assessment. Counsel argues that notwithstanding an Environmental Impact Assessment is ordinarily required in respect of an application which falls in Schedule 2 Section 20 (2) of the Ordinance confers on the Director of Physical a discretion to **"determine otherwise" (my emphasis)**

[58] Counsel also submits that there is no obligation imposed on the Director of Physical Planning by the Ordinance for materially revised plans to require another Environmental Impact Assessment.

Court's Findings and Analysis

[59] I have reviewed the Affidavit dated 1st February 2016 submitted by Rene Walters, Assistant Secretary in the Ministry of Communications, and who was authorized by the Cabinet in January 2014 to perform the functions of the Director of Physical Planning. At paragraphs 7 of the said Affidavit Ms Walters stated that "An Environmental Impact Assessment was submitted to the Planning Department by the Developer on the 28th July 2014. This Environmental Impact Assessment was undertaken for the initial project which was a larger project namely 26 villas and 72 units. This project was too dense. I accordingly required the Developer to reduce the density of the original project. They acceded to my demand and reduced the size of the Development ……..
I did not require the Developer to conduct a new Environmental Impact Assessment because the revised project… was a smaller project".

[60] At paragraph 8 and 9 of the said Affidavit, Ms Walters stated that she took the Environmental Impact Assessment into account in determining if planning permission should be granted to the Developer and denied breaching Section 20 (3) of the said ordinance.

At paragraph 9, Ms Walters admits that while the Environmental Impact Assessment did not address the impact of the Development on the Costal area, she was not of the opinion that this made the Environmental Impact Assessment incomplete and improper as the Ordinance did not prescribe the scope of the Environmental Impact Assessment.

[61] Ms Walters described and explains further at paragraphs 10-20 of her said Affidavit the efforts that were made by the Planning Department to ameliorate the concerns of the Developer and to meet the requirements of the said Ordinance.

[62] I accept the evidence from Ms. Walters and I am satisfied that an Environmental Impact Assessment was submitted to the Planning Department, and that there was no requirement under the Ordinance or otherwise for a second Environmental Impact Assessment to be submitted.

In fact Section 20 (2) clothes the Director of Physical Planning with a discretion to ´determine otherwise".

However Ms Walters stated in her Affidavit at paragraph 8 that she did take into account the Environmental Impact Assessment in determining whether to grant planning permission as required by the **Nevis Physical Planning & Development Control Ordinance.**

I therefore can find no fault with the scope of the decision of Ms Walters and the Development Advisory Committee in granting planning permission to the HTRIP Candy Resort Villa Development.

[63] Counsel for the Applicant submitted that the Respondents approval of the Candy Resort Villa Project violated Section 26 (a) of the **National Conservation and Environmental Protection Act** which states that "no person shall remove or assist in in the removing of any barrier against the sea". , and for this additional reason, the Respondents lacked the authority to grant approval to the Developers.

[64] Counsel for the Respondents in response to this issue cited the authority of the **Public Service Commission vs Davis** where Robotham JA stated that;

"If an Act is done within the Jurisdiction the fact that an erroneous procedure may have taken place or a wrong decision given does not necessarily made the decision void or even voidable. For all purposes, that decision will remain valid until set aside."

[65] There has been no Application to the Court by the Applicant to set aside the decision of the Director of Planning / and the Development Advisory Committee on this issue, and therefore, the decision of

Ms Rene Walters and the Development Advisory Committee remains valid in accordance with the reasoning of Robotham J A. in the **Davis** case.

[66] I have considered Counsel for the Applicant's submission on this issue and in light of the evidence, authorities, and legislation, I have great difficulty in accepting his submission.

I accept Ms Rene Walters Affidavit evidence that she took into consideration the Nevis Historical Conservation Society comments in granting planning permission and is not in violation of the said Ordinance.

Conclusion

[67] For the foregoing reasons in my Judgment, I find that the Applicant's Judicial review application is statute barred under the Act and the Applicant's challenge is without merit.

The Respondents acted within their Jurisdiction and authority and they can rely on the protection of the six month limitation for instituting proceedings under the **Public Authorities Protection Act.**

[68] This is a matter of Public Law and public interest and the practise is that each party should bear its own costs.

[69] I thank Counsel on both sides for their very helpful submissions and assistance.

Lorraine Williams

High Court Judge.