THE EASTERN CARIBBEAN SUPREME COURT

IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2017/0002

BETWEEN

[1] BERYL ISAAC
[2] THE CABINET SECRETARY OF GRENADA
[3] HER EXCELLENCY DAME CECILE LA GRENADE
[4] THE GOVERNOR GENERAL OF GRENADA
[5] THE ATTORNEY GENERAL OF GRENADA
[6] ERIC BRAITHWAITE
[7] MANAGER OF THE GOVERNMENT PRINTERY

Appellants

and

THE GRENADIAN HOTEL LIMITED
(doing business as the Grenadian by Rex Resorts)

Respondent

Before:

The Hon. Mde.Louise Blenman	Justice of Appeal
The Hon. Mr. Mario Michel	Justice of Appeal
The Hon. Mde. Gertel Thom	Justice of Appeal

Appearances:

Mr. Thomas Astaphan,QC, with him Mr. Dwight Horsford, Solicitor-General and Maurissa Johnson for the Applicants.
Mr. John Carrington, QC, with him Mr. Dickon Mitchell and Ms. Skeeta Chitan for the Respondent.

2017: April 3;
December 15.

Civil Appeal – Application to set aside the decision of a single judge – Land acquisition proceedings – Public law element in proceedings – Whether the learned single judge erred in the exercise of his discretion in making the conservatory order – Rights of the Crown to

land acquisition pursuant to the Land Acquisition Act Cap. 159, Revised Laws of Grenada 2010

The Grenadian Hotel obtained a 99 year lease on 30 acres of land from the Grenadian Government ("the Government") in 1991. In February 2016 the Government sought to acquire the leasehold interest of the land pursuant to the **Land Acquisition Act** by publishing a declaration for acquisition in the Gazette. On 17th March 2016 the Grenadian Hotel sought and obtained leave of the court to bring judicial review proceedings. Wallbank J granted an interim injunction against the Government prohibiting further publications in the Gazette of the declaration for acquisition of the Grenadian Hotel's interest in the property. Adrien-Roberts J heard the claim for judicial review and on 20th December 2016 she quashed the decision of the Government to publish the declaration and granted a permanent injunction preventing the Government from breaching the covenant for quiet enjoyment outlined in clause 3(1) of the lease. The judge however refused to grant the following additional reliefs: (i) an order of prohibition against the Government from compulsorily acquiring the Grenadian Hotel's interest in the property and its hotel business and (ii) a permanent injunction preventing the Government from derogating from the grant created under the terms of the lease.

During the period 20th December to 6th January 2017, the Government made three further publications of a declaration to acquire the Grenadian Hotel's interest in the property. On 16th January 2017, the Grenadian Hotel sought to appeal against the decision of Adrien-Roberts J to refuse the additional reliefs. Subsequently the Grenadian Hotel sought and obtained a conservatory order against the Government pending the determination of its appeal against the decision of Adrien-Roberts J. On 22nd February 2017 Baptiste JA having heard the application for the conservatory order directed that the Government take no steps to enforce their rights pursuant to the Land Acquisition Act. The learned judge further ordered that the Grenadian Hotel be permitted to continue to remain in possession and operate its hotel until the determination of the appeal against the decision of Adrien-Roberts J.

The applicants being dissatisfied with the decision of Baptiste JA applied to this Court to have the order set aside.

Held: dismissing the application and awarding costs to the Grenadian Hotel, such costs to be assessed within 21 days if not agreed, that:

1. It is settled law that an appellate court would be wary to interfere with the exercise of discretion of a judge unless it is shown that the judge in exercising his discretion blatantly erred in principle or failed to take into account relevant factors or took into account irrelevant factors, or his decision was so unreasonable that it exceeded the generous ambit within which disagreement is permissible.

2. In considering an application for an interim injunction in which there is a public law element in issue, the approach to be adopted is the application of the guidelines outlined in American Cyanamid v Ethicon with the necessary modifications appropriate to the public law element. The public law element is a special factor in considering the balance of justice. In determining where the balance of justice lies the court has a wide discretion to take the course which seems most likely to minimize the risk of an unjust result

American Cyanamid v Ethicon Limited [1975] 1 All ER 504; **National Commercial Bank of Jamaica Ltd. v Olint Corp Ltd**. [2009] UKPC 16; **R v Secretary of State for Transport ex p Factortame Ltd. (No. 2)** [1991] 1 AC 603; **Belize Alliance for Conservation Non-Governmental Organization v Department of the Environment of Belize (BACONGO)** (2003) UKPC 63, (2003) 63 WIR applied.

3. While a public authority acting within the law should be permitted to exercise its functions and duties for the benefit of the public, having regard to the circumstances of this case, the learned single judge in exercising his discretion correctly applied the relevant principles. He took into account the relevant matters and did not take into account irrelevant matters. There is therefore no basis to interfere with the exercise of his discretion.

JUDGMENT

[1] **THOM JA**: This is an application to set aside the Order of Baptiste JA in which he granted an interim conservatory order pending the determination of the appeal filed by the respondent ("The Grenadian Hotel"). For ease of reference I will refer to the applicants collectively as the Government.

[2] The background to this application is that the Grenadian Hotel operates a resort on approximately 30 acres of Crown land pursuant to a 99 year lease dated July 29, 1991 ("the property").

[3] In February 2016, the Government sought to compulsorily acquire the leasehold interest of the Grenadian Hotel pursuant to the **Land Acquisition Act** ("the Act")[1] by publishing a declaration for the acquisition in the Gazette. In response, the Grenadian Hotel sought and obtained leave of the court to bring judicial review proceedings. In granting leave Wallbank J also granted an interim injunction against the Government prohibiting the Government from making or causing to be made a second publication in the Gazette of the declaration to acquire the Grenadian Hotel's interest.

[4] On 31st March 2016 the Grenadian Hotel filed its claim for judicial review of the Government's decision to compulsorily acquire its interest in the property.

[5] Adrien-Roberts J having heard the claim, on 20th December 2016 in her oral ruling declared that the decision to acquire the Grenadian Hotel's interest in the property was illegal, null and void. She quashed the Government's decision to acquire possession and the decision to publish the declaration in the Gazette on 5th February 2016. The learned judge also granted a permanent injunction preventing the Government from breaching the covenant for quiet enjoyment outlined in clause 3(1) of the lease. The learned judge refused to grant the following additional reliefs: (i) an order of prohibition against the government from compulsorily acquiring its interest in the land and its hotel business and (ii) a permanent injunction preventing the Government from derogating from the grant created under the terms of the lease.

[6] The Government did not appeal the decision of the learned judge. Instead, the Government on the said 20th December 2016 issued another Notice of Declaration to acquire the Grenadian Hotel interest in the property. This notice was published in the Gazette dated 23rd December 2016, with the second publication on 30th December 2016 and the third publication on 6th January 2017 ("the December acquisition").

[1] Cap. 159, Revised Laws of Grenada 2010.

[7] On 16th January 2017, the Grenadian Hotel filed an appeal against the learned judge's refusal to grant the additional reliefs of prohibition and a permanent injunction against derogation from grant. The Grenadian Hotel then sought an interim conservatory order against the Government pending the determination of its appeal. This application for a conservatory order was opposed by the Government.

[8] The application was heard by Baptiste JA, who granted the application and directed the Government to take no steps to enforce their rights arising from the acquisition notice issued pursuant to the **Land Acquisition Act** and that the Grenadian Hotel be permitted to continue to remain in possession of the Property and to continue to operate its hotel business until the determination of the appeal. His reasons for so doing are outlined in paragraphs 9 -11 of his judgment and read as follows:

> "[9]. The court's jurisdiction to grant interim conservatory orders is not in doubt. For the reasons they have advanced, the respondents submit that that jurisdiction does not arise in this appeal. The respondents have presented their opposition to the application for interim conservatory order with clarity but I am not of the view that the application can be disposed of with the simplicity they have advanced. The respondents emphasise that the learned judge declined to grant prohibition against acquisition of the subject property and a permanent injunction against non-derogation of grant. I note that these are some of the very matters that the applicant seeks to challenge on appeal. The applicant also points to the fact of the grant of a permanent injunction preventing the first, second and third respondents from breaching the covenant for quiet enjoyment contained in clause 3(1) of the lease.
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> [10] I note that the applicant's basal contention relates to its property rights under section 6 of the Constitution. The applicant quite legitimately complains about the extraordinary haste with which the respondents have acted in issuing the Notices of Declaration of Acquisition of the land after the judgment of Adrien-Roberts J. The respondents acted with such expedition that in a mere ten days after the judgment, they provided themselves with a platform for arguing that as a matter of law the land now vests absolutely in them. Given what has transpired, the applicant's complaint that should it be successful on its appeal, its fundamental right not to be deprived of its property will be immediately and irremediably

> contravened by the respondents, cannot be taken lightly. It seems to me that it is in precisely circumstances of this kind that a conservatory order is needed. Such an order is intended to preserve the subject matter to ensure that the appeal is not rendered nugatory, thus ensuring that the rights of the applicant would still be capable of protection upon the hearing and determination of the appeal.
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> [11] I refer briefly to the respondents argument that the judgment of Adrien-Roberts J effectively brought the lis between the parties to an end and that subsequent to the judgment the government began a new process of compulsory acquisition which remains unchallenged. It seem to me that it may be difficult to argue that there is no nexus between the matters in so far as the substratum remains the government's attempts to compulsorily acquire the property in question. The applicant has ventilated its dissatisfaction with parts of the judgment of Adrien-Roberts J by filing a notice of appeal approximately three weeks after the judgment. It is just and proper that the necessary interim conservatory orders be made so as not to render the appeal otiose."[2]

[9] It is common ground that in granting the interim conservatory order the single judge exercised a judicial discretion. The sole issue is therefore whether the learned Single Judge erred in the exercise of his discretion in making the conservatory order.

[10] The single judge having exercised his discretion it is settled law that an appellate court would be very wary to interfere with the exercise of discretion unless it is shown that the Single Judge was blatantly wrong due to an error in principle in that he applied the law incorrectly or he failed to take into account relevant factors, or take into account irrelevant factors, or his decision was so unreasonable that it exceeded the generous ambit within which reasonable disagreement is permissible.

[11] It is well settled that the principles by which a court is guided in exercising its discretion whether to grant or refuse an interlocutory injunction are the guidelines

[2] GDAHCVAP2017/0002.

set out in the well-known case of **American Cyanamid v Ethicon Limited.** [3] These guidelines were summarized by the Privy Council in **National Commercial Bank of Jamaica Ltd. v Olint Corp Ltd**.[4]

[12] Where the case involves issues of public law the approach to be adopted is that outlined by the House of Lords in **R v Secretary of State for Transport ex p Factortame Ltd. (No. 2)**[5] and also by the Privy Council in **Belize Alliance for Conservation Non-Governmental Organisation v Department of the Environment of Belize (BACONGO)**.[6] The principles which emerge from these cases can be summarized as follows:

(a) In considering an application for an interim injunction in which there is a public law element in issue, the approach to be adopted is the application of the guidelines outlined in **American Cyanamid** with the necessary modifications appropriate to the public law element.

(b) The public law element is a special factor in considering the balance of justice and the court has a wide discretion to take the course which seems most likely to minimize the risk of an unjust result.

(c) Where the dispute is between a public authority and a quasi-public authority, an injunction may be granted to the quasi-public body without any undertaking in damages.

(d) It is an exceptional course for the court to restrain a public authority from enforcing an apparently valid law. A court would only take such course where having regard to all of the

[3] [1975] 1 All ER 504.
[4] [2009] UKPC 16, pp. 16-18.
[5] [1991] 1 AC 603.
[6] (2003) UKPC 63, (2003) 63 WIR.

circumstances of the case the court is satisfied that the challenge to the validity of the law is prima facie firmly based and adoption of such an exceptional course is justified.

(e) A public authority acting within the law should be permitted to exercise its functions and duties for the benefit of the public.

[13] Mr. Astaphan, QC takes issue with the manner in which the single judge applied the above principles. He submitted that the single judge erred in the exercise of his discretion in that he failed to correctly apply the principles by (a) taking into account irrelevant matters and (b) failing to take into account relevant matters.

Irrelevant matters

[14] Mr. Astaphan, QC referred to paragraph 10 of the judgment of Baptiste JA and submitted that the expeditious manner in which the December acquisition was made was not a relevant factor to be taken into account in determining whether a conservatory order should be made. The Act requires that the acquisition process be conducted expeditiously. While no time is specified in the Act within which the publications should be made, section 52 of the **Interpretation and General Provisions Act**[7] provides in effect that where no specified time is prescribed in legislation within which any act is to be done, such an act shall be done without unreasonable delay. He relied on the cases of **Thames and Macleod v Attorney-General of Grenada, Governor General of Grenada and Authorized Officer**[8], and **Grand Anse Estates Ltd v Sir Leo De Gale et al**.[9] Mr. Astaphan, QC argued that the single judge therefore erred when he took into consideration and gave undue weight to the period of time within which the acquisition was completed which was wholly irrelevant.

[7] Cap. 153, Revised Laws of Grenada 2010.
[8] (1977) 23 WIR 491.
[9] (1977) 1 OECS LR 441.

[15] Mr. Carrington, QC in response submitted that having regard to the order of the lower court and the reliefs sought on the appeal, the haste with which the declaration was made and the effect of the declaration were relevant matters in determining where the balance of justice lies.

[16] In this case there is an ongoing business on the property. If the Government was allowed to exercise rights pursuant to the declaration pending the appeal, the business would have ceased. The declaration was made and publication completed before the time permitted for an appeal against the order of the judge had expired. In other words, the Government had changed the status quo before the time for filing an appeal had expired. In those circumstances the Single Judge was correct in taking into account the timing and effect of the action of the Government in making and publishing the declaration.

[17] Mr. Astaphan, QC also contended that there was no nexus between the appeal proceedings and the subsequent acquisition by the Government. No constitutional relief was sought in the lower court by the Grenadian Hotel thus the single judge erred when he took into consideration irrelevant matters when he stated at paragraph 10 that the appellant's basal contention relates to its property rights under section 6 of the **Grenada Constitution of 1973**.[10]

[18] Mr. Carrington, QC in response submitted that the appeal involved the question whether the Government could acquire the land and thereby the business of the Grenadian Hotel. Thus, the December acquisition is directly related to the subject matter of the appeal since if the orders of prohibition are issued then the Government would be prevented from acting pursuant to the December acquisition. Also whether the December acquisition is in breach of the order of the lower court of the permanent injunction against breach of the covenant for quiet enjoyment is also a live issue in the appeal. I agree. The matters are inextricably bound

[10] Cap. 159, Revised Laws of Grenada.

together. When the single judge's statement is read in the context of the judgment, the single judge was putting the Grenadian Hotel's case into a proper perspective.

Omission of relevant matters

[19] Mr. Astaphan, QC identified the following as relevant matters which the single judge failed to take into account in considering the balance of justice: (a) there was no impediment to the acquisition; (b) no status quo to be preserved; (c) the merits of the appeal; (d) the public interest; (e) whether damages would be sufficient.

[20] Mr. Astaphan, QC submitted that the single judge failed to take into account that Adrien-Roberts J did not restrain the Crown from making a future acquisition of the property. There was therefore no impediment to the Crown acquiring the property. Also there was no challenge to the legality of the acquisition of the property. The property was therefore lawfully acquired pursuant to the provisions of the **Land Acquisition Act**. There was also no status quo to be preserved since at the time of the application for an interim conservatory order and indeed at the time of the filing of the appeal the acquisition of the property had been completed.

[21] The matters referred to by Mr. Astaphan, QC are all issues which were included in the Government's submissions before the single judge and which the single judge made reference to in his judgment. When the judgment is read as a whole it is clear that the single judge was seized of these issues and he rightly rejected the arguments of the Government on these issues.

[22] In relation to the merits of the appeal, Mr. Astaphan, QC argued that the Property was lawfully acquired and there was no challenge to the acquisition. Further, the reliefs sought on appeal being prohibition and a permanent injunction are discretionary reliefs which cannot be granted save in exceptional circumstances and not where the compulsory acquisition was not challenged. The appeal therefore has no prospect of success. He referred to the case of **First Caribbean**

Bank International (Barbuda) Ltd. v Bradford Noel[11] ("Bradford Noel case"); and **Jetpack Services Ltd. v BWIA Ltd**.[12] ("Jetpack Services case")

[23] Mr. Carrington, QC submitted in response that the onus was on the Crown to show that the appeal had no prospect of success and they failed to do so. No reason for the decision having been given by the lower court that was sufficient for the single judge to conclude that the appeal has a real prospect of success. Mr. Carrington, QC further submitted that the lower court having granted a permanent injunction against breach of the covenant for quiet enjoyment, one of the issues in the appeal is whether the December acquisition was done in breach of the order of the lower court.

[24] In my opinion neither the **Bradford Noel** case nor the **Jetpack Services** case advances the Government's case. In **Jetpack Services**, the Trinidad and Tobago Court of Appeal emphasized the basic principle that on an application for an interlocutory injunction the court is required to consider whether the greater risk of injustice lays in granting or refusing the injunction. The court allowed the appeal because the judge in setting aside the injunction had only taken into consideration whether damages would be an adequate remedy. In the **Bradford Noel** case, Dr. Noel had placed a bid to purchase a property from First Caribbean International Bank ("the Bank"). His bid was not successful and the Bank agreed to sell the property to a third party. Dr. Noel brought a claim against the Bank for specific performance. His claim was dismissed. Dr. Noel appealed this decision and sought an injunction preventing the Bank from selling the property pending the determination of the appeal. The Court of Appeal refused to grant the injunction. Mr. Astaphan, QC placed much reliance on the following passage in the judgment of the **Bradford Noel**:

> "The question why should the Court of Appeal by refusing an injunction at this stage, deny Dr. Noel his preferred remedy is answered by recognizing that Dr. Noel's obtaining an order for specific performance is quintessentially a matter of discretion. He never had a right to it."[13]

[11] HCAVP 2008 & HCVAP 2007/027.
[12] (1998) 55 WIR.
[13] HCVAP 2008 & HCVAP 2007/027, pp.8.

[25] In my view the Court of Appeal was not seeking to establish a legal principle that where the relief sought is a discretionary relief an interlocutory injunction cannot be granted save in exceptional circumstances. Indeed there is no such principle. The above passage must be read in context. The court had earlier considered the strength of the appellant's case and had determined that damages would be an adequate remedy. The court was of the view that the balance of justice favoured not granting an injunction which would have prohibited the Bank from concluding the sale to the third party.

[26] It is a well settled rule of law that a judge should not only give reasons for his decision but that the reasons should be in sufficient detail so as to inform the parties and the Court of Appeal if necessary of the principles which the judge acted on and the reasons he came to his decision. The reasons need not be elaborate nor is there a duty on the judge to deal with every argument advanced by counsel– See **Flannery and Another v Halifax Estate Agencies Ltd.**[14] and **Peter English v Emery Reimbold**.[15] While the single judge did not mention the phrase prospect of success, or strength of the applicant's case, or the merits of the appeal, in my view when paragraphs 9 -11 are read conjointly the single judge considered the case of both parties. The single judge was not required to make any findings on the merits of the parties' case. In the **Supreme Court Practice Volume 1** the learned authors in discussing the prospect of success stated as follows:

> "…The prospects of the plaintiff's success are to be investigated to a limited extent. All that has to be seen is whether he has prospects of success which in substance and reality exist. Odds against success do not defeat him, unless they are so long that the plaintiff can have no expectation of success, but only a hope. If his prospects are so small that they lack substance and reality, then he fails; for he can point to no question to be tried which can be called 'serious' and no prospects of such success which can be called 'real'".[16]

[27] Mr. Astaphan, QC also submitted that the single judge failed to consider the public interest element in the matter. He contended that the Government has a public duty

[14] 1 WLR 377.
[15] [2002] EWCA Civ 605.
[16] Volume 1 at p.566, pp. 29.

to pursue an economic developmental agenda and an injunction would effectively upend an unchallenged acquisition of property. To injunct the Crown from exercising property rights over property it has lawfully acquired is an exceptional measure which a court should only take where the acquisition itself is impugned. He relied on the cases of **Factortame; Director of Buildings and Lands v Shun Fung Ironworks Ltd.**[17]**;** and the **Chief Fire Officer and Public Service Commission v Elizabeth Felix-Phillip et al.**[18] He also referred the court to the case of **Erlin Blomquist v The Attorney-General**[19] and submitted that the single judge did not consider that any loss suffered by the Grenadian Hotel could be adequately compensated in damages.

[28] Mr. Carrington, QC submitted that the Crown did not put any evidence before the single judge of any prejudice that would be suffered if the order was made. Having regard to the consequences to the parties of the grant or refusal of the order, damages would not be an adequate remedy and the balance of justice was clearly in favour of making the order.

[29] As stated earlier, in cases involving a public law element, in considering where the balance of justice lies, the public law element is a special factor which the court must take into account. In this case as Mr. Carrington, Q.C. correctly submits, the Government did not put any affidavit evidence before the single judge of any prejudice if the injunction is granted nor indeed how the public interest would be affected.

[30] The authorities of **Factortame** and **Chief Fire Officer** which were relied on by the Government emphasize that a public authority acting within the law should be permitted to exercise its functions and duties for the benefit of the public. It is also in the public interest that businesses managed by private citizens should be permitted to continue to operate where their operation pose no harm to the

[17] Privy Council Appeal No. 42 of 1994 (delivered 20th February 1995, unreported).
[18] (Trindad & Tobago) Civil Appeal No. S.49 of 2013.
[19] [1987] UKPC 5 (delivered 3rd March 1987, unreported).

society. In the absence of an injunction the Grenadian Hotel would have to cease its business forthwith and vacate the property. Its business is operating an international hotel. If the injunction is granted the Government would have to wait until the determination of the appeal to proceed with its venture if it is successful. In my view the detriment to the public interest that would have occurred if the Grenadian Hotel fails on appeal does not outweigh the detriment that would be suffered if an injunction was not granted and the Grenadian Hotel was successful on appeal. Having regard to the circumstances of this case damages would not be adequate. The course that would cause the least irremediable harm was to grant the injunction.

[31]. In view of the above, I am of the opinion that the single judge did not err in the exercise of his discretion in granting the injunction. In any event, even if the single judge had erred and this court was required to exercise the discretion afresh, for the reasons stated above the result would be the same. Consequently, the appeal is dismissed. The Government shall pay the costs of the respondent to be assessed within 21 days if not agreed.

I concur.
Louise Blenman
Justice of Appeal

MICHEL JA: I too would dismiss the appeal on the basis that in exercising his discretion to grant the interim conservatory order, the learned single judge did not err in principle or otherwise make a decision which was so unreasonable that it exceeded any ambit of permissible judicial disagreement. I will stop short though of making any determination as to what I would have done if the discretion were mine to exercise afresh.

I agree that the respondent should get its costs, to be assessed if not agreed.

Mario Michel
Justice of Appeal

By the Court

Chief Registrar