THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

SLUHCV2018/0274

BETWEEN:

THE LANDINGS PROPRIETORS UNIT PLAN NO. 2/2007

Claimant

and

THE DEVELOPMENT CONTROL AUTHORITY

Defendant

and

TWO SEAS HOLDINGS LIMITED

Interested Party

BEFORE: Her Ladyship, the Honourable Justice Kimberly Cenac-Phulgence
(A JUDGE IN CHAMBERS)

APPEARANCES: Mr. Peter Foster QC with Ms. Rene St. Rose and Mr. Peter Marshall of Counsel for the Claimant
Mr. Adrian Etienne of Counsel for the Defendant
Mr. Garth Paterson QC with Mr. Mark Maragh of Counsel for the Interested Party:
Mr. Kurt Thomas holding a watching brief on behalf of the Attorney General

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2018: December 7, 12.

DECISION

Background

[1] The claimant, the Landings Proprietors Unit Plan No. 2 of 2007 (also known as The Landings Body Corporate or the Landings BC) ("The Landings") on 12th June 2018, filed an application without notice for leave to file judicial review proceedings, together with affidavit of Ms. Anne Copeland in support. The decision in respect of

which judicial review is sought is that of the defendant, the Development Control Authority ("DCA") of 16th April 2018, granting approval to the developer, Two Seas Holdings Limited ("Two Seas") to develop a hotel consisting of a nine-story and five-story building, among other buildings, and amenities including an open air theatre and bowling alley on Block 1257B Parcel No. 272, adjacent to and bounded by The Landings' condominium hotel.

[2] The relief sought is a declaration that the said decision of the DCA is illegal, arbitrary, irregular, irrational, unfair, unreasonable, made in breach of the rules of natural justice and an improper exercise of its discretion; an order quashing the said decision, substantial damages arising out of the damage that is and will be caused by the development to The Landings, and costs.

[3] The main grounds upon which the application for leave was sought is that The Landings operates a condominium hotel on adjoining property; the proposed development will affect The Landings' use and enjoyment of its property; the DCA, in its consideration of the development plans of Two Seas and its decision-making process, failed, refused or neglected to inform The Landings of the full nature and impact of the development, to directly or otherwise engage, refer to, seek from or invite The Landings to comment on the development plans, and thereby wrongly excluded The Landings from the decision making process despite requests for information, to take into account material considerations such as the impact of the proposed development on The Landings, which it was obligated by law to do, and to consider the material guidelines which has in the past informed its decision-making process.

[4] An order granting leave to file the claim for judicial review for the relief sought was made on 3rd July 2018 pursuant to rule 56.4 of the Civil Procedure Rules 2000 ("CPR 2000"). This order further required The Landings to file and serve a fixed date claim form and affidavit in support in respect thereof within 14 days of receipt of the order; and set the first hearing of the claim to take place on 10th September

2018. In compliance with this order, The Landings filed its fixed date claim form and affidavit in support on 13th July 2018. The DCA filed an affidavit in answer to the claim on 10th August 2018. At the first hearing on 10th September 2018, the Court made a number of case management orders, including that the hearing in the matter was scheduled for Monday, 19th November 2018. Subsequent to the first hearing and the scheduling of the matter for trial, Two Seas filed an application on 22nd October 2018. The claimant and defendant then filed a joint application for variation of the case management timetable on 26th October 2018 which they claimed would not affect the trial date of 19th November 2018. On 19th November 2018, the claimant indicated that the date set for the hearing of the application filed on 22nd October 2018 was 5th February 2019 and wished for time to respond to the said application. It was also the case that the parties had not complied with the directions except for the filing of standard disclosure. The trial date was accordingly vacated and the matter adjourned to 7th December 2018.

[5] By the application filed on 22nd October 2018, Two Seas sought several orders of the Court, among them that it be added in the proceedings as an interested party; that the ex parte order made on 3rd July 2018 granting The Landings leave to file the claim for judicial review be set aside; and in the alternative, if the application to set aside the order of 3rd July 2018 is refused, that Two Seas be at liberty to file an affidavit(s) in answer to the claim within 14 days of such order. This application is the subject of this decision.

Grounds of Application

[6] In respect of being added as in interested party, Two Seas says that if The Landings' claim for judicial review is successful, it would result in the invalidation of the approval granted to it by the DCA and prevent it from carrying out its proposed development and use of its land. Two Seas says this would have disastrous consequences, in that it would not only lose the significant financial investment made by it in connection with the development project, but also substantial revenues to be made from it. The claim would result in Two Seas being deprived of its

opportunity to use and enjoy its land in the manner and for the purpose for which it was purchased, namely hotel development. Accordingly, Two Seas says it has a legal and pecuniary interest in, and is directly affected by the issues in the proceedings, and the outcome, and is therefore entitled to be added as an interested party.

[7] In respect of setting aside leave to file the claim for judicial review, Two Seas says that The Landings has no standing to bring the claim for judicial review as it has no proprietary interest, legal or beneficial, in the adjoining property; The Landings is not authorized under the Condominium Act, the Declaration under which it is established, or its By-Laws to operate the business of a hotel and is therefore acting *ultra vires*; The Landings has no sufficient interest in the matter, and the facts put forward by it disclose no arguable case; The Landings was not truthful in its assertion that it was not consulted in connection with the proposed development; the order granted was based on false or misleading assertions by The Landings in the affidavit supporting the ex parte application for leave; The Landings failed to make full and frank disclosure of all material matters of fact and law, and failed to observe the principle of utmost good faith.

[8] Two Seas filed submissions in support of its application on 27th November 2018 and The Landings on 6th December 2018.

Decision

Application to be added as an Interested Party

[9] With respect to being added as an interested party to the proceedings, Two Seas' application was premised on CPR 19.3, which allows for the adding of a party to a claim. The application did not indicate whether Two Seas wished to be added as a defendant or claimant. On the hearing of the application, the Court posed the question to Mr. Patterson QC as to what party Two Seas would be, in relation to the substantive claim, to which there was no answer. Further, Mr. Patterson QC, in his

oral submissions suggested that there is no such thing as an *interested party*, the very capacity in which Two Seas asked to be added to the proceedings.

[10] CPR 56.11 which deals with directions that may be given at first hearing of a claim for judicial review, in paragraph (2) provides that in particular the judge may –

(a) Allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;

(b) Direct whether any person or body having such interest –

i. Is to make submissions by way of written brief; or

ii. Make oral submissions at the hearing.

[11] Part 56.13 (1) provides that at the hearing of the application the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not served with the claim form. Paragraph (2) provides that such a person or body must make submissions by way of a written brief unless the judge orders otherwise.

[12] The Court ordered on 19th November 2018, the date which had been set for the hearing of the claim that Two Seas be added as an *interested party*, albeit that the rules provide for the Court to grant permission to a person with sufficient interest to be heard at the first hearing which was the case management conference. The Court so ordered pursuant to CPR Part 56 as the Court was of the view that Two Seas is a body having sufficient interest in the subject matter of the claim, being DCA's approval of its development plans for its property. The Court is of the view that CPR Part 19 does not contemplate addition of an *interested party* and would therefore not be applicable.

[13] Two Seas' application further sought directions, should the *ex parte* order granting leave not be set aside, for Two Seas to file an affidavit in answer to the claim.

[14] It is clear however that both rule 56.11(2)(b) and rule 56.13(2) contemplate that the involvement of a person having an interest in the subject matter would be limited to that of making submissions, either orally or in writing. It does not make provision for such a person to adduce evidence by the filing of affidavits in answer to the claim as sought by Two Seas, and rightfully so, as the claim is not brought against Two Seas.

[15] The Court is of the view that Two Seas, having been added as an interested party, cannot file evidence in answer to a claim which does not seek to impugn any decision made by Two Seas. There is no need for any evidence to be filed by Two Seas in answer to a claim which is against the DCA. It is the defendant, the DCA who has to answer to this claim for judicial review. The adding of Two Seas as an interested party was to afford it the opportunity to be heard by making submissions, both written and oral at the hearing of the substantive matter, if it so desires.

[16] Mr. Patterson QC referred the Court to the case of Cage (St. Lucia) Limited v Treasure Bay (St. Lucia) Limited and Others[1] in support of his contention that Two Seas should be allowed to file affidavit evidence and not simply submissions at the hearing of the claim. Having reviewed the digest of the Court of Appeal, containing the reasons for the oral judgment in Cage, the reason for the Court adding Cage as an interested party was that:

> "The extent to which and the relief sought on the judicial review claim by the claimant as well as the interim relief which they sought would impact on the interests of Cage. The claim had substantial administrative reliefs which were directly referable to Cage notwithstanding that it was a decision of Cabinet which was the subject of the judicial review proceedings." (my emphasis)

This is not the case in the instant claim.

[17] Mr. Patterson QC also drew the Court's attention to the Civil Procedure Rules of the UK, Part 54 which makes provision for an interested party in judicial review

[1] SLUHCVAP2011/0045 delivered 7th March 2012, unreported.

proceedings. Rule 54.1(2)(f) defines an interested party as "any person (including a corporation or partnership), other than the claimant or defendant, who is directly affected by the claim."

[18] Mr. Patterson QC, also referred the Court to The Civil Court Practice 2018 (The Green Book)/Procedure and Guidance/Court Guides/Administrative Court Judicial Review Guide 2018, at paragraph 2.2.3.1, which after setting out the CPR definition of interested party, cites as an example "where a claimant challenges the decision of a defendant local authority to grant planning permission to a third party, the third party has a direct interest in the claim and must be named as an interested party." He also referred the Court to paragraph 9.1.3.1, which states that "when granting permission, a judge will often give directions as to how the case will progress to the substantive hearing, including: the time within which the defendant or interested party or parties should file detailed grounds of resistance and any evidence on which they intend to rely at the hearing."

[19] The Court notes that the UK CPR is different from ours. Our CPR does not provide for an interested party, but in similar vein recognises a party with sufficient interest in the matter. Having done so, our CPR sets out the parameters for participation of such a party having sufficient interest, which it restricts to written or oral submissions as discussed above.

[20] In support of his contention that Two Seas should be allowed to file an affidavit in answer to the claim, Mr. Patterson QC further relied on the Irish case of Belfast City Council v The Planning Appeals Commission,[2] in particular paragraphs 2 – 7. There it was stated that the governing principle is that "a non-party who participates in proceedings has a sufficient interest in their subject matter and/or is sufficiently affected by them."

[2] [2018] NIQB 17.

[21] However, the Court also says that –

> "[a] main feature of participation of a non-party is that the Court is the arbiter of the mode of participation. There are no hard and fast rules in this respect..." and "the Court will be making a quintessentially case management decision. Every such decision will entail the formation of an evaluative judgment. Mechanistic rules and practices will have no role in this exercise. The Court will be exercising a discretion. It seems to me that in every case and at every stage, the exercise of this discretion will be influenced and informed mainly though not exclusively by the threefold factors of fairness, the overriding objective with its multiple and multiple-layered ingredients, and the self-evidently important **objective that the Court's substantive decision is as** fully informed as possible and to this end has the benefit of high quality and adversarial argument on the most important issues of fact and law." (my emphasis)

[22] Of note from this dictum is that the interested party is not necessarily entitled to give evidence in the matter. The Court has discretion to manage the case as it sees fit, with the principles of fairness, the overriding objective and the need to be fully informed through complete ventilation of the issues in mind. In that case, the claimant, the Belfast City Council challenged the decision of the defendant, the Planning Appeals Commission in allowing a developer's appeal of the Council's decision and granting the developer full planning permission. These facts are plainly distinguishable from the instant claim. It is entirely conceivable where a developer has appealed the decision of a decision maker, complaining of certain procedural unfairness on that decision maker's part, and the resulting decision of the appeal body is the subject of review, that the developer would have relevant evidence to give. The instant claim differs in that it concerns the complaint of a third party, outside of the application and decision-making process, and the extent, if any, to which it was or ought to have been consulted by the decision maker. Unlike the Belfast case, the developer in this case, having no role/participation in this aspect of the process, it is hardly conceivable that the developer could contribute any relevant evidence in this regard.

[23] On this basis, even if there is any discretion in this Court to be exercised as to the extent of participation of Two Seas, for the reasons stated above the Court sees no material benefit in allowing Two Seas to file evidence in answer to the claim against

the DCA when it would not have been part of the process of granting approval of development plans, albeit it, their plans. The Court is of the view that Two Seas' interests in the matter can adequately be represented by the making of submissions. It is for the DCA to file the evidence to assist the Court in this matter.

Application to set aside Leave to file a claim for Judicial Review

[24] In relation to setting aside the order granting leave to The Landings *ex parte* to file the claim for judicial review, the first question the court must consider is whether it has the jurisdiction to set aside leave and if so, the circumstances in which such discretion ought to be exercised. It is to be noted that the DCA has not contested the grant of leave at all. Two Seas has submitted that the Court has jurisdiction pursuant to CPR 11.6 and/or pursuant to its inherent jurisdiction.

[25] The Court is of the view that CPR 11.6 is not applicable in the instant case as leave for judicial review is granted under CPR Part 56, which provides a separate and complete regime for judicial review proceedings and does not make provision for setting aside an order granting leave to file a claim for judicial review. The Court finds authority in support of this position in the Jamaican case of Dale Austin v The Public Service Commission and The Attorney General of Jamaica.[3] In concluding that Part 11 has no effect on Part 56 of the CPR, Justice Mangatal had this to say:

> "[7] One of the fundamental aims of the CPR is to improve efficiency in civil proceedings. The CPR contains some specific Parts which deal with particular types of civil proceedings. For example, Part 76 governs Matrimonial Proceedings, Part 67 deals with Administration Claims, Part 68 deals with Probate and Part 56 deals with Administrative law. The aim of this is to ensure that such matters proceed in a manner that is expeditious, just and in a way suited to the specific nature of the proceedings in issue. In each of these Parts, the rule makers have set out how proceedings are to be commenced, how service is to be effected, and other important matters relative to the conduct and adjudication of those claims. Where other general rules of the C.P.R. are to have any effect on those special rules, the rule makers have made express reference to such rules or they have been incorporated by reference or by necessary implication. Outside

[3] [2013] JMSC Civ. 26.

of such express intent, broadly speaking, the format and layout of the C.P.R. demonstrates an intention on the part of the rule makers to have those special proceedings regulated by the rules which are specifically applicable to them."

[26] Justice Mangatal relied on the Jamaican Court of Appeal case of Golding v Simpson-Miller[4] and quoted Justice of Appeal Panton, at paragraph 10 of that judgment, where he said:

> "Part 11 of the Civil Procedure Rules provides "general rules" in relation to applications for Court Orders, whereas Part 56 deals specifically with Administrative Law. Where it is intended that these specific rules are to be affected by other rules, it is so stated. For example, in Rule 56.13(1), it is provided that parts 25 to 27 of the Rules apply. This Provision reads thus:
>
> > "At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and parts 25 to 27 of these rules apply."
>
> It cannot be that without there being a statement to that effect, the special rules are to be watered down by any and every other provision in the body of rules. That would be a mockery of the entire rules and provide countless loopholes for dilatory litigants and their attorneys-at-law. The whole point of providing for the orderly conduct of **litigation would be defeated."** (my emphasis)

[27] Justice Mangatal gave further reasons why, to her mind, Part 11 does not apply to part 56 as follows:

> "[10] I agree with the Respondent that the consequence if that position was taken would be that a litigant could challenge an order for leave, at a stage when the order is conditional and at a time when the successful claimant is mandated to file his claim for Judicial Review. This would clearly lead to some procedural difficulty and overlap in proceedings which would be contrary to the overriding objective. The grant of leave is made *conditional* on the Applicant filing a claim within 14 days as mandated by Rule 56.4(12). If the Applicant does not file the fixed date claim form making a claim for Judicial Review, then the conditional leave will lapse or expire (See *Golding v Simpson-Miller).* If a Respondent were to be allowed to challenge the conditional leave within the same time period set out in Part 11.16 (2) and the Applicant to whom leave is granted defaults, then the

[4] SCCA No. 3 of 2008 (delivered 11 April 2008).

result would have been a multiplicity of proceedings, that would not necessarily further the overriding objective.

[11] However more fundamentally, the nature of the application for leave to apply for Judicial Review indicates that Rule 11.16 and Part 11 generally would not be applicable to the rules dealing with such applications. In Judicial Review proceedings, an applicant has to obtain the Court's leave before a claim can be brought against a public body for judicial review. In this area of the law, since the Applicant may simply be seeking the Court's permission to bring such a claim, (as opposed to also seeking interim relief) the Rules expressly contemplate such an application being made *ex parte*. Indeed Rule 56.3(2) states that an application for leave may be made without notice. Rules 56.4(1) and 56.4(2) respectively state that the application must be considered forthwith and that the judge may grant leave without hearing even the applicant, much less the Respondent. Rule 56.4(4) states that a judge may direct that notice of the hearing be given to the Respondent or the Attorney-General. This is in complete contrast and totally distinguishable from the applications contemplated by Part 11. Rule 11.8 (1) tells us implicitly that the applications contemplated under that Part are not those for leave to apply for judicial review. This Rule states the general rule as being that the applicant must give notice of the application to each respondent. Also, if one looks at Part 56.3 (3) and looks at the content of what an application for leave ought to contain, the requirements differ fundamentally from a general application for court orders. This to my mind, is yet another indication that the rule makers clearly did not intend that the general provisions of Part 11 were to have any effect on the rules in Part 56 that deal with leave.

[12] By not making any reference to Part 11, particularly as it relates to the setting aside of leave, the makers of the rules were contemplating a wholly different regime for challenges to *ex parte* orders for leave to apply for Judicial Review. It seems to me that the rule makers contemplated such applications being made at the First Hearing and not during the time when the order for leave would remain conditional, or in the period specified in Rule 11.16. Rule 56.13(1) clearly states that Parts 25 to 27 of the Rules apply to the First Hearing. The First Hearing in Judicial Review proceedings is akin to a case management conference and the rules envisioned that at that time, parties would make applications that would contribute to the management of the case. An application to set aside an *ex parte* order would be such an application." (my emphasis)

[28] It is nonetheless accepted that the Court does have the inherent jurisdiction to set aside the order granting leave to file a claim for judicial review. However, the case law on the area is very clear that such jurisdiction ought to be exercised very sparingly.

[29] The Privy Council case of Sharma v Browne-Antoine and others[5] held that the jurisdiction should be exercised very sparingly and that the leave previously granted should not be set aside unless the court is satisfied, on *inter partes* argument, that the leave should plainly not have been granted.[6] On the question of whether leave ought to have been granted in the first instance, the Privy Council stated that the consideration is whether "there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy"[7] and that "arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application."[8] Further considerations it said must necessarily include whether the complaint cannot be resolved in any other way, which is a condition for the grant of leave[9], and the question whether there is an arguable case must be judged on all the evidence.[10]

[30] Similarly in R v Secretary of State for Home Affairs Ex parte Chinoy[11], the court held that there was jurisdiction to set aside leave to apply for judicial review, and that it is a power which must be sparingly exercised, but which may be properly exercised in any case where the court on *inter partes* argument, is satisfied that there is no arguable point worthy of consideration on a substantial application for judicial review.

[31] In the case CS, BS (a minor suing by his mother and next friend CS) and NK (a minor suing by her mother and next friend CS), Applicants v The Minister for Justice, Equality and Law Reform, Ireland and the Attorney General, Respondents,[12] McGuinness J stated:

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[5] [2006] UKPC 57.
[6] At paragraph 22.
[7] At paragraph 4.
[8] At paragraph 4.
[9] At paragraph 24.
[10] At paragraph 25.
[11] [1991] Lexis Citation 3020.
[12] [2005] 1 IR 343.

"In my judgment in *Adam v Minister for Justice* I quoted with approval the following passage from the judgment of Bingham LJ in *R v Secretary of State, ex p Chinoy* [1991] COD 381:-

> "I would, however wish to emphasise that the procedure to set aside is one that should be invoked very sparingly. It would be an entirely unfortunate development if the grant of leave *ex parte* were to be followed by applications to set aside *inter partes* which would then be followed, if the leave were not set aside, by a full hearing. The only purpose would be to increase costs and lengthen delays both of which would be regrettable results. I stress therefore that the procedure is one to be invoked very sparingly and it is an order which the court will only grant in a very plain case."[13]

[32] He said further:

> "In my judgment in *Adam Minister for Justice* [2001] 3 IR 53 I pointed out at p 72:-
> "The danger outlined by Bingham LJ in the passage quoted above would be equally applicable in this jurisdiction. One could envisage the growth of a new list of applications to discharge leave to be added to the already lengthy list of applications for leave. Each application would probably require considerable argument – perhaps with further affidavits and/or discovery … such a procedure would result in a wasteful expenditure of Court time and an unnecessary expenditure in legal costs; it could be hardly said to serve the interests of justice."[14]

[33] Again, in the case of Gordon v DPP,[15] in looking at the inherent jurisdiction to set aside an order granting leave, the Court stressed that such jurisdiction was to be exercised sparingly and that the burden was on the applicant for such order to show that the order was not a proper one in all the circumstances of the case. The court stated:

> "It follows that the applicant for the order to set aside carries a heavier burden than the original applicant for leave. The latter has to show that he has an arguable case. The former has to establish that leave should not have been granted, a negative proposition. It is both logical and convenient to the administration of justice that this should be so. The leave procedure was intended to provide a filtering process, a protection against frivolous or vexatious applications. The judge at the *ex parte* stage will scrutinise

[13] At paragraph 67.
[14] At paragraph 68.
[15] 2 I.R. 369 at 375.

> applications for leave. Obviously his order decisions will not always be right. Hence the need to permit applications to set aside, where clearly unmeritorious applications have slipped through the net. There is also a need to be able to set aside orders made where there has been a failure by the applicant to observe the principle of utmost good faith, of which the present case is not an example. On the other hand, to permit this option to operate as a pre-emptive hearing of the substantive trial would defeat the purpose of the judicial review machinery for all the reasons given by McGuinness J and Bingham LJ. (my emphasis)

[34] On the basis of the foregoing, this Court finds no reason to exceptionally exercise its discretion to set aside leave granted to The Landings to file the claim for judicial review. As a discretion that ought to be exercised sparingly and only in cases where leave ought plainly not to have been granted, the Court finds that this is not such a case.

[35] The Court remains of the view that The Landings, on consideration of all the evidence, has an arguable case worthy of consideration, being whether it was consulted or adequately consulted in respect of the decision of the DCA, and The Landings has no alternative remedy for the relief sought.

[36] On the issue of The Landings' standing, bearing in mind the Dale Austin case, this is an issue which ought to have been raised at the first hearing at which the Court was exercising its case management powers. Nonetheless, the Court is of the view that The Landings has sufficient standing to have made out an arguable case. The Court considered CPR 56.2 (2) (b) and (c). These rules state:

> "56.2
> (1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject of the application.
> (2) This includes:
> (a) any person who has been adversely affected by the decision which is the subject of the application;
> (b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);
> (c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application."

[37] Sufficient interest according to **Halsbury's Laws of England**[16] states:

> "Sufficient interest is not defined, but it is in practice a broad, flexible concept. What is a 'sufficient interest' is a mixed question of fact and law. The determination of any issue as to whether the claimant has a sufficient interest to bring the challenge in question will depend on consideration of the relationship between the claimant and the matter to which the claim relates, having regard to all the circumstances of the case. In appropriate cases, the court may also have regard to broader concerns, including the merits of the challenge, the importance of enforcing the law, the importance of the issue raised, the presence or absence of any other person with sufficient interest, the nature of the unlawful conduct alleged and the role of the claimant in relation to the issues under consideration."

[38] The body corporate comprises the unit owners whom it is undisputed have an interest in the subject matter of the claim and to that extent would be caught by CPR 56.2 (2) (b) or (c). Further, the claimant in its pleadings states that it is charged with the responsibility of operating the property, including the buildings thereon and the operations thereof for the benefit of all unit owners. 'Buildings' is understood, as per the definition in the Act, not to include the units and forms part of what is termed 'common property'. It stands to reason that the body corporate operates the common areas including the buildings for the benefit of unit owners.

[39] Nevertheless, the issue of The Landings' standing is a matter which could be considered further at the substantive hearing and therefore does not necessitate the setting aside of leave at this stage of the proceedings,[17] or for that matter an in-depth assessment and analysis of the submissions of the interested party or the claimant relating to standing.

[40] In this regard, the Court relies on the dicta of our Court of Appeal in the case of Attorney General of Saint Lucia v Francois.[18] In that case, Francois had brought a claim for judicial review on the ground that he was a citizen of Saint Lucia, a taxpayer and a person who was entitled to vote in Saint Lucia. The question for the

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[16] "Judicial Review" (vol. 61 (2010) 5th edn.), para. 656.
[17] See R. v Monopolies and Mergers Commission, ex p Argyll Group plc [1986] 2 All ER 257 at 266.
[18] SLUHCVAP2003/0037 (delivered 29th Match 2004, unreported).

Court of Appeal was whether the claimant had sufficient interest to give him the necessary nexus with the subject matter of the claim for declaratory relief outside of the Constitution. The Court of Appeal noted that historically, locus standi had been a threshold issue that was determined before the substantive issues in public law cases but that, in recent years, there have been changes that have sometimes resulted in the determination of substantive issues before locus standi is considered, namely, Re Blake[19] and Spencer v The Attorney General of Antigua and Barbuda.[20]

[41] In Francois, the Court of Appeal looked at the merits of an application that challenged the appointment of a Prime Minister after inconclusive elections and found that the application was unmeritorious and therefore decided that it was not necessary to consider whether the claimant had locus standi. The Court ruled that:

> "... [the] approach used and recommended in Spencer accords with good law and reason. An applicant for a declaration can have locus standi in an unmeritorious claim. On the other hand, in a meritorious case, it must be necessary to canvass the issues and the facts in order to determine whether there is a sufficient nexus between an applicant and the subject matter of the claim to give him or her locus standi."[21]

[42] On the evidence, there is no clear failure on the part of The Landings to make full and frank disclosure, the extent and adequacy of any consultation between the DCA and The Landings being a matter to be determined at the hearing of the claim. As part of the issue of non-disclosure, Two Seas suggested that The Landings had not disclosed that they had an alternative remedy, that alternative remedy being a private civil claim. The suggestion was that the only impact of the development complained of by The Landings was interference with the right to light and that this could be addressed by a private claim. However, the remedies sought by The Landings are in relation to the decision of the DCA to grant approval of Two Seas' development, and on the pleadings, the impact is broader than a mere claim for

[19] (1994) 47 WIR 174.
[20] (1999) LRC 1.
[21] Francois at para 146.

interference with light. The Court is of the view that there is no alternative remedy which The Landings can seek in respect of the DCA's approval.

[43] The Court in Gordon v DPP held that in the absence of disputed facts or arguments concerning non-disclosure or the absence of good faith, an applicant's version of the facts should be presumed to be correct for the purpose of determining the existence of an arguable case and the more appropriate forum for an assessment of whether there has been non-disclosure is at the hearing of the claim.

[44] Two Seas' submissions relating to the operation of a hotel by the body corporate being *ultra vires* the Act, Declaration and By-Laws is not a matter which should be the subject of this application as it would be more appropriately dealt with at the substantive hearing.

Conclusion

[45] Based on the foregoing discussion and reasons, I make the orders and give the directions below.

Order

1. The application to set aside the Order dated 3rd July 2018 granting leave to file a claim for judicial review is refused.
2. Costs on the application to set aside in the sum of $750.00 to be paid by the interested party to the claimant.
3. The issue of standing of the claimant may be further considered on the hearing of the substantive claim in this matter, should it arise.
4. The claimant and defendant are at liberty to file and serve affidavit evidence from two additional witnesses on or before 11th January 2019.
5. All affidavits shall stand as evidence in chief.
6. All witnesses/affiants are to attend on the scheduled date of the trial.
7. Should the claimant or defendant wish to cross-examine any of the witnesses, the relevant application shall be filed and served on or before 25th January 2019.

8. The claimant and defendant are to file and exchange written submissions with authorities on or before 1st February 2019.
9. Two Seas, as the interested party is permitted in accordance with Part 56 of the CPR to file and serve written submissions with authorities on or before 1st February 2019 and to make oral submissions at the hearing of the claim.
10. Any further applications in the matter are to be filed on or before 1st February 2019.
11. The hearing of the claim is adjourned to 13th February 2019.

Kimberly Cenac-Phulgence
High Court Judge

By the Court

Registrar