



[2019] JMSC Civ 223

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2013 HCV 06024**

<b>BETWEEN</b>	<b>COMMISSION OF STRATA CORPORATION</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>STRATA APPEALS TRIBUNAL</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Mr. Stuart Stimpson and Mr. Hadrian Christie instructed by Hart, Muirhead and Fatta for the Claimant

Miss Carla Thomas and Miss Shaniel Hunter instructed by Director of State Proceedings for the Defendant

Mr. Douglas Leys Q.C. and Mr. Kenik Brisset instructed by LeySmith Attorneys-At-Law for the Interested Party

Heard: 30<sup>th</sup> of January, 2017

Delivered: 29<sup>th</sup> of March, 2019

Judicial Review - Right to a fair hearing - Duty to give reasons - Right to be heard orally -  
Right to be present

**CRESENCIA BROWN BECKFORD, J**

**APOLOGY**

[1] There has been a significant delay in the delivery of this judgment for which I accept total responsibility. I crave your kindness and generosity to accept my apologies.

**INTRODUCTION**

[2] A complaint was made by the Interested Party, Ms. Heather Urquhart (hereinafter referred to as the “Complainant”) to the Commission of Strata Corporation (hereinafter called the “Commission”). The Commission subsequently made certain orders, one of which had adverse implications for the Complainant. Aggrieved, she appealed to the Strata Appeals Tribunal (hereinafter called the “Tribunal”) on the ground that she had not been afforded a hearing. The Tribunal found that that the Complainant had not been afforded a fair hearing and quashed the Order of the Commission.

[3] The Commission has now applied for Judicial Review of the Tribunal’s decision and for an Order of certiorari, quashing the decisions of the Tribunal made on August 2, 2013 in the Appeal. The court declines to exercise its discretion to quash the Orders of the Tribunal.

**CHRONOLOGICAL BACKGROUND**

[4] The Complainant is the owner of Strata Lot #2 in the Proprietors Strata Plan (PSP) # 528. Lot #1 is owned by Mrs Melody Cammock-Gayle. There are only two strata lots in this strata plan. PSP #528 is part of a larger development known as Timbers of Worthington.

[5] The Complainant made several complaints to the Commission. The relevant complaints are as follows:

- i. Mrs. Melody Cammock-Gayle was using her unit for the operation of a business in contravention of the Registration (Strata Titles) Act.
- ii. The building on Strata Lot #1 encroached into the common area of PSP #528 by 11 feet.
- iii. The concrete structure with conduit for Jamaica Public Service (JPS) meters encroached on the common area of PSP #528. These included not only the 2 meters for Lots #1 and #2 of PSP #528 but an additional 7 meters in Timbers of Worthington.
- iv. Letter and Meter Boxes for the 25 units in Timbers of Worthington were encroaching on the common area of PSP #528.

**[6]** Pursuant to section 3B(c) of the Registration (Strata Titles) (Amendment) Act 2009<sup>1</sup>, she made an application for Dispute Resolution and Order in relation to these complaints to the Commission of Strata Corporations.

**[7]** A meeting was scheduled for 10<sup>th</sup> of October 2012 between the Complainant and Mrs. Cammock-Gayle. The Complainant and her Attorney were present, however, Mrs. Cammock-Gayle was absent. It was not clear whether Mrs Cammock-Gayle received notification of this meeting. The meeting was rescheduled to 23<sup>rd</sup> October 2012 and the Complainant gave further particulars of Mrs. Cammock-Gayle to ensure her notification.

**[8]** On the 23<sup>rd</sup> October 2012, it appears that the meeting was postponed due to the imminent arrival of hurricane Sandy. The matter was then referred by the

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<sup>1</sup> 3B(c) stipulates the functions of the Commission shall be to:

*(c) facilitate the resolution of disputes, in particular, those between a corporation and a proprietor arising from any matter to which this Act relates;*

Inspectorate Commission of Strata Corporation to the Legal Committee by way of a report, requesting that the Legal Committee instruct the Commission on how to deal with the matter of the encroachment. This appears to have been communicated to the Complainant by way of email. A meeting was fixed for the 6<sup>th</sup> of November 2012. It does not appear that the Complainant expected to attend this meeting as she forwarded a letter for deliberation by the Legal Committee. The Complainant was thereafter notified that the Legal Committee meeting had been postponed to 13<sup>th</sup> November, 2012. The correspondence to the Complainant does not indicate the reason for the postponement. It however appears to be in response to communication sent from the Complainant referencing a scheduled meeting of the Legal Committee on the 6<sup>th</sup> of November 2012.

- [9]** The Legal Committee met on the 13<sup>th</sup> of November 2012, extracts of the minutes of the meeting showed it considered the application for Dispute Resolution and order and that the Legal Committee advised the Commission to make the following Orders inter alia:
- i. that PSP #528 demolish the letter and meter boxes and the owner of strata lot #1 remove the encroachment in the common area.
  - ii. The cost involved for removal of the letter and meter boxes should be borne by all the proprietors who have letter and meter boxes located on PSP #528.
  - iii. That the owner of strata lot #1 was to cease the illegal use of her strata lot for commercial purposes.
- [10]** These recommendations were apparently accepted by the Commission without demur. There is no indication that the Commission met to discuss these recommendations.
- [11]** By way of letter dated 14<sup>th</sup> November 2012, the Complainant was advised that the Legal Committee to the Commission had recommended that the Commission issue an order for the removal of the letter and meter boxes from the common area

of PSP #528 and that the costs associated with the removal and relocation be borne by PSP #528.

[12] The Complainant, aggrieved by these Orders, appealed to the Tribunal on the grounds, inter alia, that:

1. *The Commission acted in breach of the rules of natural justice by not affording the [Complainant] an opportunity to be heard either by the Legal Sub-Committee of the Commission or the Commission itself before coming to its decision to order Strata Plan #528 to remove and relocate the letter and meter boxes from the common area.*
- 5 *The finding of fact that the concrete structures containing the letter and meter boxes belonging to the owner of PSP 528 was illegal, was unreasonable and could not be supported in light of the evidence which the [Complainant] would have presented had she been given an opportunity to be heard.*

[13] The Tribunal ruled that having heard the appeal against the decision of the Commission contained in the letter dated 14<sup>th</sup> November, 2012 the costs associated with the removal and relocation of the letter and meter boxes are to be borne by PSP 528. The Commission acted in breach of the rules of natural justice by not allowing the appellant an opportunity to be heard orally. She had a reasonable expectation of being allowed to be present at the determination of the matter having been kept informed of the various dates of the hearing prior to the actual date of the hearing and that the decision of the Commission was nullified.

[14] Being aggrieved by the decision of the Tribunal, the Commission has applied for Judicial Review of the Tribunal's decision as follows:

***THE CLAIMANT SEEKS AGAINST THE DEFENDANT FOR:***

1. *“An order of certiorari, quashing the decision of the Tribunal made on August 2, 2013 in the Appeal;*

2. *Costs to the Claimant with Special Certificate for two (2) Counsels; and*
3. *Such other remedies as this Honourable Court may see fit.*

***THE CLAIMANT SEEKS THE RELIEFS ABOVE ON THE FOLLOWING GROUNDS THAT:***

- a. *The decisions of the Tribunal were made without jurisdiction, as Ms. Urquhart was not aggrieved person entitled to invoke its jurisdiction. Its decision was therefore ultra vires and a nullity.*
- b. *The Tribunal failed to give any or any adequate reasons for its decisions.*
- c. *The Tribunal patently erred in law based in the facts before it, as the Commission heard Ms. Urquhart's complaint."*

**ISSUES**

**[15]** The issues for adjudication arising are:

- (a) Whether the Tribunal was required to give any or sufficient reasons for its decision.
- (b) Whether or not the Interested Party was entitled to a hearing;
- (c) Whether the Commission heard the Interested Party; and
- (d) Whether the Interested Party/Complainant was entitled to be heard before the order adverse to her was made.

**THE CLAIMANT'S SUBMISSIONS**

**A. JURISDICTION**

**[16]** The Claimant abandoned at the hearing the issue of jurisdiction and conceded that the Complainant was an aggrieved person entitled to invoke the jurisdiction of the Tribunal.

B. *REASONS*

- [17] It was accepted that there is no general duty for the Tribunal to give reasons for its decisions. However, the law now trends towards increasingly recognising the duty to give reasons especially since the reasons will assist the parties in determining whether there was any error of law in the decision-making process.
- [18] To support this contention, Counsel relied on the cases of **R v Higher Education Funding Council ex parte Institute of Dental Surgery** [1994] 1 WLR 242, **R v Secretary of State for Trade and Industry ex parte Lonrho Plc** [1989] 1 WLR 525 and **Padfield v Minister of Agricultural Fisheries and Food** [1968] AC 997. These cases all highlight the court's willingness to support the giving of reasons in an effort to promote fairness and transparency of the decision-making process.
- [19] It was submitted that the Tribunal's pronouncement on the date of the hearing was vague and unintelligible. It is unclear how the Tribunal arrived at this decision. In the circumstances the court is being asked to quash the decision of the Tribunal.

C. *FAIR HEARING*

- [20] Counsel noted that while the Tribunal is obliged to give a party the opportunity to be heard, as outlined in Section 15A (3)<sup>2</sup> of the Act, there is no such obligation on the Commission.
- [21] It was submitted that the Commission had a duty to act fairly and they did so in the circumstances. The Commission sought to conduct an inter-partes hearing which did not come to fruition despite multiple attempts to do so. Based on the fact that

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<sup>2</sup> Section 15A (3) states that:

*(3) Before determining an appeal, the Tribunal shall give the parties the opportunity to be heard by the Tribunal.*

there was no disputed issue that would require an oral hearing, it was decided that it would consider the matter on paper.

[22] It was further argued that the Complainant was represented by Counsel throughout her application and would therefore have been aware that the application was being considered on paper. At this point, she raised no objection and did not request an oral hearing but continued to submit documents to support her case to the Committee for its consideration. In the circumstances, it is not tenable to say that the Commission was unfair in its dealings. The Tribunal therefore erred when it found that the Commission did not observe the principles of natural justice as the Complainant had been afforded a hearing.

[23] It was also argued that natural justice is concerned with '*substance over form*'. In light of all the Complainant submitted for the Committee's consideration, there was nothing more she could have orally presented in the circumstances. Even if the Complainant could have submitted more, there is no evidence that this would have changed the ruling of the Commission.

[24] On this ground, the court was asked to consider the cases of **Nyoka Segree v Police Service Commission** SCCA 142/2001 delivered on March 11, 2005, **Owen Vhandel v The Board of Management Guys Hill High School** SCCA 72/2000 (June 7, 2001) and **R (Thompson) v Law Society** [2004] 2 All ER 113 where the courts have noted that there is no right to be heard orally.

[25] Based on these premises, the court was asked to find that the Tribunal erred when it found that the right to be heard orally was mandatory.

## **THE DEFENDANT'S SUBMISSIONS**

### **A. REASONS**

[26] Counsel pointed to the fact that there is no general rule requiring the giving of reasons for a decision by an administrative or quasi-judicial body. Reliance was



placed on the case of **Brian Alexander v Land Surveyors Board of Jamaica** SCCA 13/2008 delivered July 2, 2009 at paragraph 24 where the Court of Appeal affirmed that this is the case. The issue of fairness was however raised by the Court of Appeal where it noted that an aggrieved person has the right to appeal a decision as failure to give reasons in such a case may provide a basis for challenging an administrative decision. At paragraphs 24 and 25, Smith JA states:

*“.....however I need not dwell on this since both the Committee and the Board provided the appellant with reasons for their decisions.*

*The Committee’s reason was contained in its report to the Board and a copy of this report was sent to the appellant under cover letter date March 13, 2017.”*

[27] The Defendant submitted in accordance to the reasoning in **Brian Alexander**, that the court need not detain itself with the issue of the existence of a duty to give reasons to the parties, as reasons were in fact given to the Claimant in the instant case in the Order of the Tribunal.

[28] The Order inter alia stated that the Commission was in breach of Natural Justice by not allowing the Appellant an opportunity to be heard orally. The findings of the Tribunal were that the Appellant had a reasonable expectation of being allowed to be present at the determination of the matter having been kept informed of the various dates of the hearing prior to the date of the hearing. The decision of the Commission was as a result nullified.

[29] The case of **Stefan v General Medical Council** 49 BMLR 161 at 171 was relied on for the submission that the succinctness of the reasons does not render them inadequate. The Privy Council in **Stefan** stated that:

*“..... there is an obligation on the Committee to give at least a short statement of the reasons for their decisions. The extent and substance of the reasons must depend upon the circumstances. They need not be*

*elaborate nor lengthy. But they should be such as to tell the parties in broad terms why the decision was reached.”*

[30] On this basis, the argument is that the adequacy of an administrative body's reasons is to be measured by whether they enable the affected party to know why they won or lost and whether they disclose an error of law. It was submitted that the reasons given by the Tribunal enabled the Claimant to ascertain why the appeal was decided as it was and it disclosed no error of law on the Defendant's part.

[31] Counsel argued that the Order was confined to the appeal that was before the Tribunal. It was pointed out also that the Appellant was in receipt of the Order and therefore the reasons of the Tribunal prior to the filing of the Application for Leave. Finally, it was submitted that certiorari ought not to be granted on this ground as the Tribunal did provide reasons to the Claimant in its Order and further that these reasons were adequate.

B. *FAIR HEARING*

[32] Counsel relied on **Halsbury's Laws of England** Volume 61 (2010) 5th edition at paragraph 629 to advance the position that the right to an oral hearing cannot be classified as an error in the circumstances where the interested party had been previously invited to attend meetings.

[33] The principle of natural justice that no man is to be condemned unheard was not applied in the circumstances where the Commission decided the question as to the cost for the removal of the letter and meter boxes in a way which was adverse to the Claimant, without giving her an opportunity to be heard on the matter. There is therefore no proper basis for the grant of certiorari.

C. *OMISSIONS*

- [34] In closing off its submissions, the Defendant contended that the Affidavit relied upon for the grant of leave indicated that the Order of the Tribunal given at the hearing was the extent of the Tribunals' decisions and reasons. However, the Affidavit of Keva Hilton indicated that the Defendant's Order was sent to the Claimants office on October 28, 2013 before the application for the grant of leave. The disclosure of the formal Order would have been relevant to the application for the grant of leave.
- [35] The Defendant's submitted that the remedy of certiorari is discretionary and omission by way of mere inadvertence is enough to disentitle an applicant to the relief. See **Minister of Transport, Works and Housing & the Contractor General** [2013] JMSC Civ 12 at paragraph 43.

**THE INTERESTED PARTY'S SUBMISSIONS**

A. *COMPLIANCE WITH CIVIL PROCEDURE RULES*

- [36] Firstly, Counsel submitted that Rule 56 of the Civil Procedure Rules (hereinafter called CPR) was not complied with. It was noted that the affidavit in support of the Fixed Date Claim Form did not comply with the rules as it does not set out all the details required. In addition, the said affidavit sought to rely on the affidavit relied upon filed when leave for Judicial Review was being sought. Reliance was placed on the case of **Chester Hamilton v Commissioner of Police** [2013] JMCA Civ 35 where the court stated that the affidavit used to secure leave to apply for Judicial Review was inadequate. Therefore, Counsel argued that the Claimant's application for Judicial Review is irregular and must be struck out for this reason.

B. *REASONS*

- [37] It was argued that the Tribunal only considered the matters presented by the Complainant which was the challenge to the decision of the Commissioner to order

the removal of the letter and meter boxes and its associated costs. Therefore, the court is asked to consider only the ruling of the Tribunal as set out in the order.

[38] Counsel argued that there was no duty on the Tribunal to give reasons for its decision. In the alternative, it was said that even if a mandatory duty existed, the Tribunal discharged this duty. Firstly, it was contended that the Act does not impose upon the Tribunal, a duty to give reasons for its decisions. Further, it was said that nothing in the statute implied that this duty existed. Reliance was placed on the case of **Stefan v General Medical Council** 49 BMLR 161. Counsel further contended that even if the common law approach ought to be applied to this issue, their conclusion would be the same. It was submitted that there was no special factor which would influence the court to depart from the general rule.

[39] Secondly, even if the court found that the reasons ought to have been given, adequate reasons were provided by the Tribunal as set out in their Order dated August 2, 2013. It was argued that the principles in **Stefan** were applied by the Tribunal as the parties are clear on the rationale for the ruling. In addition, it was noted that in the case of **Wickramsinghe v UK** [1998] EHRLR 338 the European Commission of Human Rights found that the provision of a full transcript of the hearing was sufficient. Counsel noted that in the proceedings in question, a full transcript was also provided and so the Commission would have known the reason for the decision. As such, it was submitted that this ground should fail.

### C. *FAIR HEARING*

[40] Counsel maintained that the Complainant was not heard on the matter of PSP #528 absorbing the cost for removal of the letter and meter boxes from the common area. Counsel outlined the circumstances of the case and noted that she was led to believe that she would have been afforded a hearing before any decision was taken on the matter. Additionally, since she was invited to previous hearings, she had a legitimate expectation to be accorded a hearing before the decision was made.

[41] It was further argued that the Complainant was not afforded an opportunity to be heard on the adverse decision made. Counsel relied on the case of **Ridge v Baldwin** [1963] 2 All ER 66 to support this argument. The court was asked to consider the main issue, which is “*whether or not the interested party was given an opportunity to be heard in respect of a decision which was adverse to her.*” There is no dispute as to whether the Complainant was heard in respect of the decision taken. In fact, it was highlighted that at no point in time was Ms. Urquhart told that her complaint would have been heard on paper. So, if this procedure was to be adopted, the Commission had a duty to inform the Complainant of this. No fulsome submissions were prepared as she legitimately expected that there would be an oral hearing. In this regard, the court has been asked to find that her right to natural justice was breached. Overall, it was submitted that the Claimant’s claim should fail.

## THE LAW

### *DUTY TO GIVE REASONS*

[42] The law and position in relation to the duty of Tribunals in this jurisdiction to give reasons was recently expounded in the case of **Manor Court Limited v The Minister of Labour and Social Security and The Industrial Disputes Tribunal** [2018] JMSC Civ. 59. The applicant Manor Court Limited had been the former employers of Mrs. Barbara Rigbye who was employed as a Property Manager. She was over 60 years old at the time of her employment with the applicant. The Applicant decided to retire Mrs Rigbye with immediate effect resulting in a dispute arising between the parties. Mrs Rigbye alleges that she was unjustifiably dismissed. She sought recourse with the Ministry of Labour and Social Security but to no avail. The parties did not resolve their disputes as they hoped.

[43] The matter was referred by a Conciliation Officer to the Minister of Labour and Social Security, the 1st respondent, who in turn gave directions to refer the matter to the Industrial Disputes Tribunal (‘IDT’), the 2nd respondent, for determination.

The applicant was of the view that conciliation was still ongoing and sought as a result to challenge the decision of the 1st respondent by way of judicial review. The applicant contended that the 1st respondent inter alia failed to give reasons for her decisions.

[44] Straw J at paragraph [45] said that:

*"There is no statutory duty placed on the 1<sup>st</sup> respondent to give reasons for the exercise of her decision. Nevertheless, this does not mean that the court will not consider this issue in determining whether leave should be granted to the applicant. This consideration is tied fundamentally to the issue of fairness. In **Mallak**, Fennelly J referred to 'the underlying fundamental presumption being that those to whom discretionary powers are entrusted will exercise them fairly insofar as they may affect individuals.' He went on further to say:*

*Where fairness can be shown to be lacking, the law provides a remedy. The right of access to the courts is an indispensable cornerstone of a state governed by the rule of law.*

*And continued:*

*While our courts have extensively considered the adequacy of reasons when they have actually been given, there has been no principled consideration of the question whether a general obligation to furnish reasons exists at all or, if it does not, in what cases reasons should be given and why."*

[45] Straw J concluded that there was no general duty to give reasons but that a duty to give reasons would only arise if there is a requirement that the parties ought to know the issues to which the Minister addressed her mind and that she acted lawfully. In other words, "*where it may be necessary to demonstrate whether the exercise of discretion was illegal or irrational.*"

- [46] In **Linton Allen v His Excellency the Right Hon. Sir Patrick Allen and the Police Service Commission** [2017] JMSC Civ. 24, a case earlier decided by her, she concluded that the lack of reasons had been mitigated by the fact that the rationale could be clearly deduced from the contents of the transcript of evidence along with the courts findings. Sergeant Allen had sought judicial review on the basis that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had failed to provide him with reasons for their decision. Counsel for Sergeant Allen had argued that though there was no general duty to give reasons, the circumstances of the case 'cry out' for reasons for the decision. In those circumstances the failure to give reasons was unlawful.
- [47] In conclusion though there is no duty to give reasons, reasons should be given where failure to do so would create injustice or be unfair to any party.
- [48] As to the sufficiency of reasons Straw J also considered this question in **Linton Allen**. She referred to the case of **Clifford Jackson v Police Service Commission** (unreported), High Court, Antigua and Barbuda, claim no. ANUHCV 2010/0487 judgment delivered 23 August 2012. The judge at first instance considered that the verdict was not reasons and were not satisfactory reasons sufficient to meet the threshold required by law.
- [49] On appeal, **Police Service Commission v Clifford Jackson** (unreported), Court of Appeal, Antigua and Barbuda, Appeal No. ANUHCVA2012/0028, oral judgment delivered 28 November 2013, it was held that the trial judge erred in holding that the inadequacy of reasons given for the decision led to the conclusion that the members of the Tribunal did not give the issues before them any or any adequate consideration before affirming the Commissioner's decision that the insufficiency of reasons was not a ground of review.
- [50] Though brief, the reasons for the decision of the Tribunal are clear from the utterances of the Chairman after the adjournment to consider their positions. They are further solidified in the formal Order.

## *RIGHT TO A FAIR HEARING*

- [51] Our courts have time and time again confirmed the principle of natural justice that parties are to be given adequate notice and opportunity to be heard - the *Audi Alteram Partem* rule. Indeed, it was said by Parke B in **Bonaker v Evans** (1850) 16 QB 162 at 171 that “no proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity to answer the case against him.”
- [52] The rule has been extended to cover Tribunals vested with authority to adjudicate upon matters involving civil consequences to individuals. In the **Board of Education v Rice** [1911] AC 179 Lord Loreburn said “*while not bound to conduct a hearing as though it were a trial (t)hey can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement*”.
- [53] The locus classicus concerning the right to a fair hearing in the modern era is **Ridge v Baldwin** (supra). The Appellant, Mr. Ridge, became Chief Constable of the County Borough of Brighton in 1956, after serving in the Brighton Police Force for some thirty-three years. At a meeting of the Watch Committee, the police authority, on 7th March, 1958, it was resolved that he should be dismissed, and he argued that that resolution was void and of no effect because he had no notice of the grounds on which the Committee proposed to act and no opportunity to be heard in his own defence. The Chief Constable appealed arguing that the police authority had acted unlawfully (*ultra vires*) in terminating his appointment in 1958 following criminal proceedings against him where he was tried on a charge of conspiring with the senior member of his force and others to obstruct the course of justice. He originally preferred to abandon the point and accept the view that he had been properly dismissed but his dismissal was later considered unlawful, in breach of the obligation of natural justice.



[54] The House of Lords held that Baldwin's committee had violated the doctrine of natural justice in that the Appellant had not been charged nor informed of the ground on which the Committee propose to proceed and had not been given a proper opportunity to present his defence and held that the decision to dismiss the appellant was null and void.

[55] Lord Morris noted that:

*"It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet: Kanda v Government of Malaya. My Lords, here is something which is basic to our system; the importance of upholding it far transcends the significance of any particular case."*

[56] The said case reviewed a line of cases with decisions which adversely affected the livelihood, property or status of persons who had no opportunity or no proper opportunity of presenting their cases before the decisions were given. The principle was elicited "that no man should be deprived of his property without having an opportunity of being heard." "Heard" is generally used in a broad sense to include written representations.

#### *RIGHT TO BE HEARD ORALLY*

[57] In **Ridge v Baldwin** (supra) it was said by Lord Hodson, quoting Tucker L. J in **Russell v Duke of Norfolk** [1949] 1 All ER 109 at pg. 114 that:

*"There are... no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case and the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth."*

[58] There is no general right to an oral hearing, it depends on the circumstances. What is required is that the person has a reasonable opportunity of presenting his case. **Russell v Duke of Norfolk.**

[59] In the case of **R (on the application of Smith) v Parole Board; R (on the application of West) v Parole Board** [2005] UKHL 1 it was the recommendation of the Parole Board to return to jail two prisoners released on license. The prisoners sought judicial review of this decision first on the grounds of procedural impropriety in that the Board had reached its decision without affording them a fair hearing and secondly on the ground of a violation of Articles 5 and 6 of the European Convention. The House of Lords decided in favour of the prisoners. Lord Bingham of Cornhill stated that:

*'While an oral hearing is most obviously necessary to achieve a just decision in a case where facts are in issue which may affect the outcome, there are other cases in which an oral hearing may well contribute to achieving a just decision.'*

In those circumstances, the duty to give an oral hearing was wider than the Parole Board had thought. Procedural fairness called for more than consideration of the prisoner's representations on paper.

[60] Langrin JA in the case of **Owen Vhandel v the Board of Management Guys Hill High School** SCCA No. 72/2000 (June 7, 2001) stated that *'a fair hearing does not mean a hearing according to what would obtain in a court of law.'* He also stated that *'basically, it is an opportunity to put one's side of a case before a decision is reached. It is nothing more than a basic duty of fairness.'*

## **ANALYSIS**

### **A. REASONS**

**[61]** It is indisputable that there was no statutory duty placed on the Tribunal to give reasons. In this instance, the issues before the Tribunal were clear, that is the question of removal and relocation of the letter and meter boxes and the associated costs. Full submissions were made by all concerned parties. It is true that the statements of the Chairman on delivering the decision of the Tribunal contained some ambiguity. Nonetheless the Formal Order makes clear that the Tribunal did give clear reasons for this decision, brief though they might have been. Armed with the Order and the transcript, it is difficult to see what unfairness was created for the Commission by the failure to give extensive reasons. I am in agreement with the Defendant and the Complainant that the Tribunal did give reasons albeit brief.

### **B. RIGHT TO BE HEARD**

**[62]** It is clear from the exposition of the law that the right to a fair hearing is not to be interpreted as the right to be heard orally or the right to be present at the hearing. Whether or not this is the case has to be determined from the particular circumstances of each case. Therefore, to determine whether the Complainant had the right to be present and be heard orally, an examination of the actions of each side leading up to the matter being determined by the Commission is necessary.

**[63]** The record shows the Complainant made a complaint following which a meeting was fixed for October 10, 2012 with the Respondent and the Dispute Resolution Team. The meeting adjourned to October 23, 2012 and on that date Mrs. Cammock-Gayle did not attend and matter was referred to the Legal Committee

**[64]** At the initial meeting fixed by the Commission for the hearing of her complaint, the Complainant attended with her attorney. This suggested that she expected to have

an input (be heard orally) in the meeting. She had been required to attend (be present) at this meeting (See letter dated September 25, 2012).

- [65] This expectation continued to the next scheduled meeting. In her letter of October 12, 2012 to Ms. Sullivan she says “I wish and expect this matter to be heard when **we meet** on the next scheduled date. (emphasis mine). Letter of October 16, 2012 from Shellian Sullivan also required that she attend the meeting and that she “make every effort to attend”.
- [66] The correspondence show that the scheduled meetings with the Dispute Resolution Team were to have been conducted with Mrs. Cammock-Gayle. From the Affidavit evidence of Ms Watson which is uncontradicted, Mrs Cammock-Gayle failed to attend and to participate in the dispute resolution. This occasioned the reference to the Legal Committee to consider the material before it. That is, the material from the Complainant.
- [67] This expectation to be present and to make oral arguments did not carry through to the meeting before the Legal Committee. The reason for it appears to be that there was no expectation that Mrs. Cammock-Gayle would attend and so there would be no contest of the issues raised. The correspondence shows the Complainant’s position. By email of November 5, 2012 information is sent by her to be forwarded to the Legal Committee for action at their meeting fixed for the following day.
- [68] The question is what outcome did she expect from the Legal Committee, that is was the Committee expected to resolve the dispute?
- [69] It would appear that in these circumstances, some decision being one to resolve the issues was expected. It should be noted that the Legal Committee is not the final arbiter. Their decision takes the form of a recommendation to the Commission. The Commission then acts or not, based on its finding. Clearly, there were no further hearings in the instant case.

- [70] The Commission makes the argument that the Legal Committee and the Commission are one and the same. This position is untenable for the reason of the request made by the Commission of the Legal Committee that is, to advise the Commission.
- [71] The issue is whether or not she could have had an expectation that a possible result of the Legal Committee's consideration was that she could be made to bear the cost of removing the letterboxes. The correspondence suggests that the possibility of such an outcome was never in the contemplation of the Complainant nor was she made aware that this could be a possible outcome. Not only was the decision adverse, but it had a serious financial effect on the Complainant.
- [72] Both the Defendant and the Complainant are correct. The right to be heard in these circumstances would arise afresh. There was the possibility of a different outcome. Submissions could have been made as to the liability for payment and/or the manner of payment. It was incumbent on the Commission if not the Legal Committee to hear from the Complainant before coming to this decision.

## **THE DECISION OF THE TRIBUNAL**

- [73] In order to assess whether the Tribunal acted unlawfully it first has to be determined what was the question before the Tribunal. The Amended Grounds of Appeal before the Tribunal (Exhibit SW6) complains that neither the Commission nor the Legal Committee had afforded the Complainant the right to be heard before coming to a decision to order PSP #528 to remove and relocate the letter and meter boxes from the common area.
- [74] The transcript of the proceedings before the Tribunal however shows the issues under consideration were obscured leading to a lack of clarity as to the meaning of the orders made.
- [75] The Tribunal at first asks the question "did the proprietor in view of her complaints have a right to be heard, the right according to the law of natural justice, the answer

is yes, she ought to have been afforded the opportunity to be heard because she had made a valid complaint” Counsel for the Commission later asks. “so then the decision is quashed” The Chairman responds “what she asks for is what she gets”. Counsel for the Commission continues to seek clarification as to what was quashed, that is whether it was the order for demolition or the order for the cost of the demolition. The Chairman responds “anything that is mixed up in Miss Urquhart’s complaint”. She further said.” the meeting was not held”

**[76]** This lack of clarity in the Order of the Tribunal given orally as to whether the entire decision of the Commission was nullified or the Order pertaining to the costs associated with the removal and relocation the letter and meter boxes remained. Despite Mr. Stimpson’s valiant efforts to secure clarity and Mr. Leys’ attempting to fill the gaps, the final order was not elucidated any further at the hearing.

**[77]** This state of affairs must be seen against the submissions of Counsel. Though the ground of appeal was to the demolition order and associated costs, the thrust of counsels’ submissions at times seemed to impugn or support the entirety of the hearing by the Legal Committee.

**[78]** For ease of discussion the formal order of the Tribunal is repeated here.

*Having heard Mr. Douglas Leys Q.C. for the Appellant and Mr. Stuart Simpson of Hart Murihead Fatta for the Respondent the Tribunal ruled as follows:*

- 1) The Commission of Strata Corporations acted in breach of the rules of natural justice by not allowing the Appellant an opportunity to be heard orally. She had a reasonable expectation of being allowed to be present at the determination of the matter having been kept informed of the various dates of the hearing prior to the actual date of the hearing.*
- 2) The Commission of Strata Corporations has jurisdiction over PSP #528. The PSP#528 was incorporated on the registration of the Strata plan on the 14th of May 1993. The Commissions jurisdiction is not contingent on registration with the*

*Commission under section 4(4) of the Registration (Strata) Titles Act but by virtue of section 3B(1)(a) of the said Act.*

3) *The decision of the Commission was nullified.*

4) *Cost were granted in favour of the Appellant.*

[79] Morrison JA (as he then was) considered how to view the formal order vis a vis the orders made orally at the hearing in the case of **San Souci Limited v. VRL Limited** SCCA 83/2009. He framed the issue as whether in construing the order, the court is confined to the actual words used in the order itself or whether it is permissible to look behind the order to the reasons given for it as an aid to interpretation.

[80] He stated the general rule of construction as taken from Halsbury 4<sup>th</sup> edn. Vol 26, para 550 that:

*“When a judgment is clear as to its terms, not even the pleadings, nor the history of the action may be utilized to construe the judgment contrary to its meaning.”*

[81] However, where there is an ambiguity, resort may be had to the surrounding circumstance including the reasons for judgment to clarify the order.

[82] On appeal the Privy Council rejected the argument that the process of construing an order is to be carried out in two discrete stages, the first of which is to determine the meaning of words used and secondly, if there is any ambiguity, the court's reasons may be used to resolve the ambiguities.

[83] The correct statement of the law was set out in the judgment delivered by Lord Sumption as follows:

*“... the construction of a judicial order, like that of any other legal instrument, is a single coherent process. It depends on what the language of the order would convey, in the circumstances in which the Court made it, so far as these circumstances were before the Court and patent to the parties. The reasons for making the order which are given by the Court in its judgment are an overt and*

*authoritative statement of the circumstances which it regarded as relevant. They are therefore always admissible to construe the order. In particular, the interpretation of an order may be critically affected by knowing what the Court considered to be the issue which its order was supposed to resolve.”*

- [84] Though decided in the context of a matter concerning arbitration, the Privy Council held that these considerations applied generally to the construction of judicial orders.
- [85] I would hold that these principles are applicable to construing the orders of the Tribunal which is a quasi-judicial body.
- [86] The gravamen of the Complainant’s complaint to the Tribunal was to the order for the removal of the letter and meter boxes by Proprietors Strata Plan #528 and its attendant cost to the two owners of the strata lots of which she was one. Counsel for the Complainant seemed to be of the view that this adverse decision negated the entire hearing. This seemed to be the conclusion of the Tribunal. This would appear to be the reason the order was so widely drawn.
- [87] It is the court’s view that Order Number One is to be construed against this background. On this consideration it is clear that Order Number One is limited to the question of the costs associated with the removal and relocation of the letter and meter boxes. There was an abundance of facts before the Tribunal supporting its finding that the Complainant had not been heard on this point. In this regard, the Tribunal made no error of law. I am constrained however to point out that in stating that the Complainant had a right to be heard orally or be present, the Tribunal fell in error. In this regard the order must be read down to remove those portions.

## **DISPOSITION**

- [88] On the basis that Order Number One of the Tribunal is limited to the question of the cost and relocation of the letter and meter boxes, the court declines to grant



an Order for certiorari quashing the decisions of the Tribunal made on August 2, 2013. Order Number One is clarified and read down to read “The Commission of Strata Corporation acted in breach of the rules of natural justice by not allowing the Appellant an opportunity to be heard before coming to a decision on the question of the removal and relocation of the letter and meter boxes.”

**[89]** In view of this finding I have found it unnecessary to decide the issue of omission on the part of the Complainant and non-compliance with the Civil Procedure Rules.

### **POST SCRIPT**

**[90]** At the time of delivery of this decision, Counsel for the Tribunal asked the court whether it considered that by law the Tribunal made the only decision possible having no jurisdiction to make any other orders for the removal and relocation of the letter and meter boxes. It was indicated that the court did not consider that issue to affect the decision because:

- 1) It is not known what submissions would be made to the Commission.
- 2) It would be open to the Complainant to make her own submission as to the interpretation of any statutory provisions before the Commission.

**[91]** It was also asked of the court whether it was making an Order that the Commission hear the Complainant. It was indicated that the court would expect the parties to act in keeping with the Orders made. That of course would be to the extent that the Commission wishes to pursue the same course of action.