



[2020] JMSC Civ 132

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

**IN CIVIL DIVISION**

**CLAIM NO. 2015 HCV 04868**

<b>BETWEEN</b>	<b>ELLEN WILLIAMS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>STRATA APPEALS TRIBUNAL</b>	<b>1ST DEFENDANT</b>
<b>AND</b>	<b>COMMISSION FOR STRATA CORPORATIONS</b>	<b>2ND DEFENDANT</b>
<b>AND</b>	<b>JOSINA JACKSON</b>	<b>INTERESTED PARTY</b>

**IN OPEN COURT**

**Mr. Frank Phipps QC and Ms. Sue-Ann Williams instructed by Sue-Ann Williams, for the Claimant**

**Ms. Catherine Minto and Ms. Jaavonne Taylor instructed by Nunes, Scholefield, DeLeon & Co, for the 1st Defendant**

**Ms. Symone Mayhew and Ms. Rochelle Johnson instructed by Symone M. Mayhew & Co, for the 2nd Defendant**

**Mr. Andre Earle instructed by Earle and Wilson, for the Interested Party**

**Heard: April 25, 26 2018 and June 26, 2020**

**Statutory Interpretation - Meaning of 'shall' in paragraphs 13 and 14 of the First Schedule of the Registration (Strata Titles) Act - Whether the Commission for Strata Corporations can hear disputes between proprietors under section 3B (1) (c) of the Registration (Strata Titles) Act - Judicial Review – Certiorari - Irrationality/ Unreasonableness - Whether the tribunals acted unreasonably - Natural Justice - Duty to act fairly - Legitimate Expectation - Whether there was an expectation that is legitimate – Burden of Proof – Standard of Proof**

**ANDERSON, K.J**

## **BACKGROUND**

- [1]** This matter before the court concerns the judicial review of the decisions of the 1<sup>st</sup> defendant (“the Tribunal”) and the 2<sup>nd</sup> defendant (“the Commission”). The decision of the Tribunal, dismissed the claimant’s appeal against an earlier decision of the Commission, for the removal of her dog, from her strata lot.
- [2]** The claimant is a resident and a registered proprietor of strata lot number six (6) in the strata corporation known as Proprietors Strata Plan number 595 (PSP 595), since 1995; and sometime in 2011 she kept a small dog, Chico, on her strata lot.
- [3]** In August 2011, the claimant was served a notice, signed by Mr. Norman Tyson and Precious Edwards, described in the notice as Complex President and Complex Manager, respectively, requesting the removal of Chico in fifteen (15) days. The claimant did not comply with said notice.
- [4]** In 2013, the Commission received two complaints concerning Chico. One complaint was lodged by PSP 595 on March 13, 2013, and the other by Ms. Josina Jackson on November 12, 2013, the proprietor of strata lot number one (1) in PSP 595. Ms. Jackson was formerly an occupier of strata lot no five (5), between 1995 – 2012. In her complaint, she stated that Chico barked loudly and continuously, throughout the day causing a nuisance and disturbance to her, which affected her ability to sleep and concentrate. She added that Chico created an unpleasant odour, which infringes her right and entitlement to a pleasant living environment.
- [5]** On April 29, 2013, the Commission, after inspecting the claimant’s strata lot, issued an order that Chico be removed from PSP 595 in seven (7) days. However, on October 15, 2013, the order for the removal of Chico was rescinded and the parties were invited to a hearing.
- [6]** On March 12, 2014, the Commission commenced that hearing, in which both complaints were consolidated. The claimant and Ms. Jackson attended and were represented by counsel. At its conclusion, on May 19, 2014, the Commission ruled

in favour of the complainants and ordered that Chico be removed from PSP 595 within ninety (90) days of the date of the order.

- [7]** On June 12, 2014, the claimant filed an appeal with the Tribunal in an effort to challenge the decision made by the Commission.
- [8]** While the claimant's appeal was pending, she filed concurrent proceeding on October 28, 2014, in this court, seeking leave to apply for judicial review of the decision of the Commission. She sought and obtained an ex parte interim injunction, prohibiting the Commission and Ms. Jackson from taking steps to remove Chico.
- [9]** That injunction, was discharged on March 3, 2015, on the ground of material non-disclosure. The claimant removed Chico from her strata lot on or about March 3, 2015.
- [10]** Upon the completion of the appeal, the Tribunal, on July 17, 2015, dismissed the claimant's appeal and upheld the decision of the Commission for the removal of Chico.
- [11]** On February 9, 2016, the Honourable Justice Batts, granted leave to Ms. Jackson, to be a party in these proceedings.
- [12]** On October 27, 2016, the claimant was granted leave to apply for judicial review, by the Honourable Justice Sonia Bertram-Linton Ag. (as she then was) against the decisions of the Tribunal and the Commission.
- [13]** On November 9, 2016, the claimant filed a fixed date claim form, seeking:
  - a. An order of certiorari quashing the decisions of the defendants that an executive committee does not have to be appointed in accordance with the provisions of paragraphs 4 and 5 of the First Schedule of the Act which prescribes that it is mandatory for the corporation to hold annual general meetings;

- b. An order of certiorari quashing the decisions of the defendants that it is not necessary for the executive committee to be appointed despite the provisions of paragraphs 13 and 14 of the First Schedule of the Act which provides for the executive committee of the corporation to be elected annually at a general meeting with its functions: “*exercise the powers and perform the duties of the corporation;*”
- c. Damages;
- d. Interest;
- e. Costs; and
- f. Such further and other relief as this Honourable Court may deem fit.

**[14]** In support of said orders, the claimant particularized seventeen (17) grounds. Many of these substantial grounds, when examined, can be recognized to be duplicative. Thus, in the circumstances, and for convenience, I will refer to the grounds, as being:

- a. The executive committee was not formally appointed by law, so as to have jurisdiction, to issue a notice to the claimant, as such, any decision arising from the absence of said appointment, is a nullity; and the defendants acted ultra vires;
- b. The defendants lacked jurisdiction to hear any complaint against the claimant;
- c. The findings of the defendants were irrational and illogical and/or unreasonable;
- d. The procedures adopted by the defendants were contrary to the prescribed procedures under the statute and the principles of natural justice; and

- e. The claimant had a legitimate expectation that any decision arrived at under the Act, would have been taken by an executive committee, appointed at a properly convened annual general meeting.

## **ISSUES**

[15] The following issues are now before this court, for determination:

- a. Whether the defendants had jurisdiction to hear and determine the complaints, brought against the claimant, by PSP 595 and Ms. Jackson.
- b. Whether the decisions of the defendants are irrational and illogical.
- c. Whether the procedures adopted by the defendants breached the principles of natural justice.
- d. Whether the claimant's alleged legitimate expectation was breached.

## **THE LAW AND ANALYSIS**

### **Burden and standard of proof**

[16] The burden of proof in matters such as these rests with he who raises the allegations. Hence the well-known phrase, 'he who asserts must prove.' The claimant had brought this claim against the defendants, and she therefore, had the burden of proving her case. That is, she needed to adduce sufficient evidence, upon a balance of probabilities, to make out her case against the defendants, or at least, against one or the other of the defendants.

### **The relevant statutory provisions**

[17] Section 3A (1) of the **Registration (Strata Titles) Act, Jamaica, 1969** (“the Act”) establishes the Commission of Strata Corporations.

[18] Section 3B (1) outlines the functions of the Commission, by stating that:

*“(1) The functions of the Commission shall be to-*

*(a)...*

*(b)...*

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

*(d)...*

*(e) enforce the by-laws;”*

[19] Pursuant to section 3B (2) (a) (iii):

*“(2) In exercise of its functions the Commission may-*

*(a) order, by notice in writing to an executive committee or a proprietor or both-*

*(i)...*

*(ii)...*

*(iii) the removal of animals from any strata lot or common property”*

[20] Section 9, subsections (1) and (2) of the Act, provide that the control, management, administration use and enjoyment of the strata lots and the common property shall be regulated by the Act and the by-laws, which shall include those in the First and Second Schedule. Subsection 3 provides that until by-laws are made by the corporation, in that behalf, the by-laws in the First and Second Schedules, shall, from as of the registration of the strata plan, be in force for all purposes, in relation to the common property.

[21] Section 15A establishes the Strata Appeals Tribunal, subsection 2(b) provides that any person aggrieved by a decision of the Commission may appeal to the Tribunal in the prescribed manner.

[22] Paragraph 1(d) and (e) of the First Schedule states that:

*“(1) A proprietor shall -*

*(a)...*

*(b)...*

*(c)...*

*(d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other proprietors or their families;*

*(e) not to use his strata lot or permit it to be used in such manner for such purpose as shall cause a nuisance or hazard to the occupier of any other strata lot (whether proprietor or not) or the family of such occupier;”*

**[23]** Paragraph 2(a) of the First Schedule provides that:

*“(2) The corporation shall-*

*(a) control, manage and administer the common property for the benefit of all proprietors;”*

### **General Meetings**

**[24]** Paragraphs 4 and 5 of the First Schedule provide that a general meeting of the proprietors shall be held within three months after the registration of the strata plan and subsequent general meetings (i.e. annual general meetings) shall be held once each year.

### **The Executive Committee**

**[25]** Paragraph 13 of the First Schedule provides that there shall be an executive committee of the corporation, which shall, subject to any restrictions imposed or direction given at a general meeting, exercise the powers and perform the duties of the corporation. Paragraph 14 states that this executive committee shall be elected at the first general meeting of the corporation and thereafter at each annual general meeting.

**[26]** Paragraph 1 of the Second Schedule states that:

*“(1) The proprietor shall not-*

*(a)...*

(b)...

(c) *keep any animals on his strata lot or the common property after notice in that behalf from the executive committee.*”

### **Whether the defendants had jurisdiction to hear the complaint lodged by PSP 595?**

- [27] The claimant has asked this court to make judicial pronouncement on paragraph 1 of the Second Schedule. This court agreed with the submission of the claimant, to the effect that, there is no general restriction in the Act and/or the by-laws against a proprietor keeping an animal on his/her strata lot. However, on receipt by a strata owner, of a notice from the executive committee, requiring the animal to be removed, from the strata corporation/complex, then the animal is to be removed.
- [28] To this end, the claimant contended that there was no properly appointed executive committee, to have issued a notice to her, regarding the removal of Chico and to subsequently cause a complaint to be lodged by PSP 595, to the Commission. The court, now must delve into paragraphs 13 and 14 of the First Schedule, to decipher whether there has been statutory compliance. To make such determination, the court will examine the language of the Act. The conclusion to be garnered from said paragraphs, turns on the interpretation of the word, ‘shall,’ as used in the relevant context.
- [29] The House of Lords in **London & Clydeside Estates Ltd v Aberdeen District Council [1980] 1 WLR 182**, considered the correct interpretation to be applied to the word ‘shall,’ in a particular statutory context. The appellants sought and obtained a Certificate of Alternative Development on October 24, 1974. The certificate provided, did not notify the appellants, as required, of their right to appeal to the Secretary of State, within thirty (30) days of receipt.
- [30] On January 9, 1975, the appellants sought to exercise their right to appeal. The question before the House of Lords was, whether in the absence of said information, the certificate issued, was valid. In determining this issue, the House of Lords pronounced that in a majority of cases, an inquiry as to whether the relevant statutory provision was mandatory or directory was of limited assistance.

Instead, a more intended result, can be achieved, by asking whether there has been substantial compliance with the statute as a whole, notwithstanding there existed some partial non-compliance. The House of Lords noted that once the purpose of the statute is being carried out, albeit in a manner that is seemingly non-compliant with the statute as a whole, the court should focus on, whether there has been substantial compliance with the relevant statutory provisions.

[31] The House of Lords observed that, in that case, the purpose of the statutory requirement of including the period for the right to appeal, was to inform the appellants of their right and the time within which it was to be exercised.

[32] The House of Lords then stated that the failure to expressly state the time period in the certificate, that Parliament was intentional in setting out, could not be deemed a mere technicality or procedural irregularity, which may be overlooked. Consequently, the absence of the said information rendered the certificate issued, invalid. The House of Lords reiterated that the validity of the certificate is not dependent on whether the appellants suffered prejudice, but instead, it depended on substantial compliance.

[33] Lord Hailsham LC at 189F- 190C said:

*'When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events. It may be that what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the chain of events. It may be that what the courts are faced with is not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another. At one end of this spectrum there may be cases in which a fundamental obligation may have been so outrageously and flagrantly ignored or defied that the subject may safely ignore what has been done and treat it as having no legal consequences upon himself. In such a case if the defaulting authority seeks to rely on its action it may be that the subject is entitled to use the defect in procedure simply as a shield or defence without having taken any positive action of his own. At the other end of the spectrum the defect in procedure may be so nugatory or trivial that, if the subject is so misguided as to rely on the fault, the courts will decline to listen to his complaint. ' and 'though language like 'mandatory,' 'directory,' 'void,' 'voidable,' 'nullity' and so forth may be helpful in argument, it may be misleading in effect if relied on to show that the courts, in deciding the consequences of a defect in the*

*exercise of power, are necessarily bound to fit the facts of a particular case and a developing chain of events into rigid legal categories or to stretch or cramp them on a bed of Procrustes invented by lawyers for the purposes of convenient exposition. As I have said, the case does not really arise here, since we are in the presence of total non-compliance with a requirement which I have held to be mandatory. Nevertheless I do not wish to be understood in the field of administrative law and in the domain where the courts apply a supervisory jurisdiction over the acts of subordinate authority purporting to exercise statutory powers, to encourage the use of rigid legal classifications. The jurisdiction is inherently discretionary and the court is frequently in the presence of differences of degree which merge almost imperceptibly into differences of kind.'*

- [34] The Court of Appeal in England, later applied this decision in **Regina v Secretary of State for the Home Department, ex parte Jegeanthan; Ravichandran v Secretary of State for the Home Dept. - [ 2000 ] 1 WLR 354.**
- [35] The Secretary of State had refused two asylum seekers' application for asylum. The asylum seekers successfully appealed to the special adjudicator against the decisions of the Secretary of State.
- [36] The Secretary of State then sought to initiate an appeal against the decisions of the special adjudicator. Rather than using the prescribed form, they used a letter. That letter, contained all the requirements stipulated in the form, save a declaration of truth. The question before the Court of Appeal was, whether the letter can effectively stand, as the appeal being properly initiated.
- [37] In the first case, the tribunal held that the failure to use the prescribed form did not render the application for leave to appeal a nullity. Consequently, it allowed the appeal and remitted the matter to a special adjudicator for rehearing. On the asylum seeker's application for judicial review of that decision, the court held that the Secretary of State's failure to comply with the relevant provisions, rendered the tribunal's decision a nullity, consequently, it was quashed.
- [38] In the second case, the validity of the application for leave to appeal was not questioned before the appeal tribunal, hence it allowed the Secretary of State's appeal and quashed the decision of the special adjudicator.

[39] The Court of Appeal noted that the questions to be asked in matters of a failure to observe a procedural requirement are: whether there had been substantial compliance with the relevant provisions, whether the non-compliance was capable of being waived and, if so, whether it could or should have been waived. Where that non-compliance was not capable of being, or had not been waived, the court then needed to consider, what the consequences of the non-compliance were.

[40] The Court of Appeal adumbrated that in considering the consequences of non-compliance, with a procedural requirement, the court ought to consider the language and intent of the legislation, as against the factual circumstances and seek to do, what is just, in the circumstances.

[41] The Court of Appeal held that the requirement to use the prescribed form, was not to be interpreted restrictively. Further, although the Secretary of State's omission, was an irregularity, it had been waived by the tribunal in the first case and had been impliedly waived by the asylum seeker, in the second case.

[42] It was noted that, in any event, the irregularity could have been cured by the appeal tribunal, under their relevant rules; and that irregularity had not affected the asylum seekers in any way. Accordingly, in those circumstances, the application for leave to appeal in each case should be treated as being properly initiated by that letter.

[43] Lord Woolf MR at 359H notes that

*“...It must be remembered that procedural requirements are designed to further the interest of justice and any consequence which would achieve a result contrary to those interests should be treated with considerable reservations.”*

[44] This observation by Lord Woolf MR, aligns with the overriding objectives of Jamaica's **Civil Procedure Rules (CPR)**. Thus, the court will be guided by that, in balancing the interests of justice, in order to arrive at its conclusion.

### **Substantial Compliance**

- [45]** Having delved into the authorities governing the interpretation of a statutory provision, which on a literal interpretation, appears to be mandatory in effect, this court will now apply the principles enunciated in those cases, to the facts of this case.
- [46]** Upon examining the Act, it is apparent to me, that it relates to the formation of strata plans, within which, there are strata lots and the management of those strata lots and any buildings on those strata lots i.e. apartment complexes. For the proper management of these complexes, the Commission and corporations are given a broad spectrum of duties and powers, so that, they can effectively manage all of the diverse matters which they will be required to manage from time to time.
- [47]** One such medium which the Act stipulates, that the corporation is to be managed, is through the structure of an executive committee. This court is guided by that framework, so that any judicial pronouncements to be made, will align with same.
- [48]** As there was no formally appointed executive committee at a general meeting or an annual general meeting in place, when the notice was issued to the claimant, this court is now tasked with deciding whether the absence of same, should render the powers and duties stipulated in the statute, to the corporation, a nullity.
- [49]** In this regard, the court agrees with the finding of the Tribunal that though it is apparent that PSP 595 had not held any elections in accordance with the rules, the property was in fact being managed and there was in place, at the very least, a de facto, executive committee. That committee had hired a manager and if such body was managing PSP 595 without objection, then, in the absence of evidence that there was no legally appointed executive committee, it is correct to accept that there was in fact, a functional committee.
- [50]** Having made said observation, this court is satisfied in concluding, that there has been substantial compliance with the objectives and purpose of the statute as a whole, despite there being no formally appointed executive committee. The legislative intention behind the requirement for an executive committee, is to equip

an operational arm of the corporation, to carry out its functions and duties as prescribed under the Act.

### **Who has the power to waive a non-compliance, if it is such that it can be waived**

[51] As adumbrated above, the parties, or inferior tribunals, can, in some cases, based on their statutory powers, waive a non-compliance. In the circumstances of this case, this court observed that the defendants did not have the statutory power to waive the relevant non-compliance. Also, this court has not treated with the claimant's counsel's attendance and participation in the hearings, as constituting a waiver of the non-compliance.

[52] Consequently, though the non-compliance in this case, could have been waived by the claimant, since it was not waived, this court must now consider the consequences of that non-compliance.

[53] In that regard, this court observed that, the only effect of the absence of a formally appointed executive committee, was a mere technicality in its formation. This mere technicality, has the potential of invalidating numerous acts done by the said de facto committee, in accordance with the whole Act. Thus, the interests of justice, would be defeated if a small deficiency is allowed to defeat the intention of the Act.

[54] Further, this court observed that the claimant, is relying on this mere technicality, in promulgating her wishes to have an animal in her strata lot, after it has been communicated to her, that same was undesired at PSP 595, by the members of the de facto executive committee. The prejudice that will be suffered by the claimant is less than that which will be suffered by PSP 595, in being fettered by a mere technicality, in carrying out its statutory duties, consequently, defeating the intention of Parliament.

### **Whether the claimant received notice**

[55] The wording of paragraph 1 of Second Schedule states that the proprietor, after receiving notice from the executive committee, shall not keep any animals on their

strata lot. The defendants have submitted, that even if the notice dated August 17, 2011 was to be deemed invalid, the claimant still had notice that there was a “no pet” policy at PSP 595 through a meeting that was held on March 29, 2000, wherein the claimant was in attendance when this policy was discussed and reflected in the minutes.

**[56]** The evidence before the court suggested, that the claimant received a notice on August 17, 2011. Thus, the Commission did not err, when it concluded she had in fact received written notice, and it is the disregard for that notice, that led to the complaint being lodged by PSP 595.

**[57]** Contrary to the written and oral submissions of the Tribunal’s and Commission’s counsel on this particular point, this court has also formed the conclusion that the meeting held on March 29, 2000, did not constitute “notice” to the claimant that she should not have any animal, on her strata lot. The Act stipulates that the corporation is governed by the Act and the by-laws. As such, proprietors are, pursuant to the Second Schedule, entitled to receive notice regarding animals on their strata lots.

### **Whether the defendants had jurisdiction to hear the complaint lodged by Ms. Jackson**

#### **The power of the Commission**

**[58]** Having examined and concluded that PSP 595 had jurisdiction to issue the complaint to the Commission, attention will now be placed on whether the Commission could hear the complaint of Ms. Jackson.

**[59]** The language Section 3B (1) (c) stipulates that the Commission is to facilitate the resolution of disputes in particular, those between a corporation and a proprietor arising from any matter to which the Act relates.

**[60]** In **R (on the application of Quintavalle) v Secretary of State for Health [2003]** UKHL 13 Lord Bingham at paragraphs 7 and 8 notes that:

*“[7] Such is the skill of Parliamentary draftsmen that most statutory enactments are expressed in language which is clear and unambiguous and gives rise to no serious controversy. But these are not the provisions which reach the courts, or at any rate the appellate courts. Where parties expend substantial resources arguing about the effect of a statutory provision it is usually because the provision is, or is said to be, capable of bearing two or more different meanings, or to be of doubtful application to the particular case which has now arisen, perhaps because the statutory language is said to be inapt to apply to it, sometimes because the situation which has arisen is one which the draftsman could not have foreseen and for which he has accordingly made no express provision.*

*[8] The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. **Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life.** The court’s task, within the permissible bounds of interpretation, is to give effect to Parliament’s purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.” [emphasis added]*

[61] The claimant has contended that, on a strict application of the section 3B (1) (c), by the use of the phrase “*in particular*” the Commission is restricted to only hear matters between proprietors and the corporation. The defendants, on the other hand have contended that the use of the phrase “*in particular*” does not dictate the entire provision, as it is clear from the use of the phrase “*any matter to which the act relates,*” that, it is intended that the dispute resolution powers of the Commission, be given, a wide interpretation.

[62] In these circumstances, this court observed that the clear and ordinary meaning of the words used, lend themselves to an absurdity within the context of **Grey v Pearson (1857) 6 H.L. Cas. 61**. At page 17, the learned author of **Cross on Statutory Interpretation, 3<sup>rd</sup> ed., 1995** cited Lord Wensleydale’s dictum, which indicates that absurdity can relate to some conflict or inconsistency between a provision in dispute and other provisions of the same statute, or an inconsistency

between the provision and the objectives or purpose of the statute, read as a whole.

- [63]** The court observed that under the general framework of the Act, it is a primary consideration that proprietors will not only be in interaction with the corporation, but will also be in close interactions each other. The question then to be asked is, whether a dispute can only arise between a corporation and a proprietor so as to cause the intervention of the Commission? On examination of the proximity as between proprietors; and their usage of the common property, in conformity with the by-laws, this court observed that the contention of the claimant does not align with the Act as a whole.
- [64]** Also, it is observed that the First Schedule, in contemplation of this framework, places a restriction on a proprietor's usage of his/her strata lot and common property, so as not to cause a nuisance to other proprietors and occupiers. With said framework in mind, it would defeat the spirit of the Act, to find that, if there was a dispute between proprietors then, they will have to seek other methods of dispute resolution, which may be lengthy and costly.
- [65]** Additionally, this court also agrees with the Commission's submission that Regulation 25B (1) of the Act requires that complaints to the Commission must be made on Form 10. A review of Form 10 highlights the possible complainants and lists "proprietor" and "corporation" as well as "other." This suggests that complainants are not only limited to proprietors and the corporation, but other complainants, once it is a matter to which the Act relates.
- [66]** The court noted that the Commission will handle numerous disputes, thus, in accordance with the statutory provisions, it needs to have the wide powers that the Act intended that it have, for the effective management of corporations.
- [67]** Consequently, this court is of the conclusion, that the Commission had the jurisdiction to hear both complaints against the claimant.

## **The jurisdiction of the Tribunal**

[68] By virtue of section 15A (2) (b), having concluded that the Commission had jurisdiction, the Tribunal also had jurisdiction to hear the appeal from said decision.

## **Whether the decision of the decisions of the defendants was irrational/unreasonable**

[69] On an application for judicial review, the court is not concerned with the substance of the decision made by the defendants, but rather, is considering the propriety of the methods by which the decisions were arrived at. In other words, a judicial review proceeding is supervisory only. It is not akin to an appeal.

[70] The defendants are not authorized to act unreasonably, despite the wide ambit of their duties and powers under the applicable statutory provisions earlier cited.

[71] The concept of 'Wednesbury reasonableness' is derived from the decision of the Court of Appeal of England in **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 233**.

[72] Lord Greene, by way of summary, stated at pages 233- 234 as follows: -

*"The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority has kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority has contravened the law by acting in excess of the powers which Parliament has confided in them."*

[73] It is important to note that unreasonableness in the making of a decision ought not to be equated with an error or errors, in the making of that decision. In order to successfully establish before this court, that an inferior tribunal's decision is

unreasonable, a claimant has a duty of proving that no reasonable tribunal could have considered the same facts and arrived at the decision that the tribunal made.

[74] To this end, this court is satisfied that the defendants, having considered the relevant facts before them, did not act unreasonably when they made the decision to order the removal of Chico, in keeping with their statutory duties and powers.

[75] There were sufficient facts before the defendants, which indicate that the presence of Chico, at the very least, caused a nuisance to Ms. Jackson. These relevant facts include: the evidence that Ms. Jackson resided at lot five (5) then subsequently lot (1), placing her, in sufficient proximity to the claimant and Chico. The undisputed fact that dogs bark; and based on its frequency, intensity and pitch, that barking, could, by virtue of the size of PSP 595, have caused aggravated nuisance to Ms. Jackson. In the view of this court, these facts, vitiate any legal ground of unreasonability.

**Whether the procedures adopted by the defendants breached the principles of natural justice.**

[76] For natural justice to be successfully proven, it is important that the claimant shows real unfairness in a decision made, as distinguished from sheer disagreement with that decision.

[77] In the **Board of Education v Rice [1911] AC 179** Lord Loreburn at page 182 considered the process that an inferior tribunal ought to employ, in ensuring fairness and 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.”*

[78] In the locus classicus of **Ridge v Baldwin [1963] 2 All ER 66**, 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 March 7, 1958, it was resolved that he should be dismissed. He argued that that resolution was void and of no effect as he had no notice of the grounds on which the Committee proposed to act, and also no opportunity to be heard in his own defence.

**[79]** The Chief Constable appealed, arguing that the police authority had acted unlawfully 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.

**[80]** The House of Lords held that the Respondent 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. Consequently, the decision to dismiss the appellant was null and void.

**[81]** Lord Morris at page 102I 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."*

**[82]** The defendants have a duty to act in accordance with the provisions that give them light. They cannot act without jurisdiction, nor do they have any jurisdiction to act unfairly. This court is satisfied that the claimant was given a full opportunity to be heard and was treated fairly.

**[83]** Initially, the Commission breached the principles of natural justice, when it ordered the removal of Chico in May 2013. However, this was corrected when they, in fairness, rescinded said order and invited the relevant parties to a hearing. In the absence of any evidence that said hearing was unfair, an argument of a breach of natural justice, cannot stand.

[84] The court is satisfied that the defendants, when called upon to balance the needs of the claimant to have a companion, being an elderly person living alone; and the rights of Ms. Jackson to enjoy her strata lot, employed a fair procedure to arrive at their decisions.

[85] The claimant, has not raised sufficient facts to properly enable this court, to find that her right to natural justice, was breached.

### **Whether the claimant's alleged legitimate expectation was breached?**

[86] The learned editors of Halsbury's Laws of England, Volume 61A, 2018, at paragraph 50, have summarized the basic principles underpinning the doctrine of legitimate expectation and have stated that:

*"A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though there is no other legal basis upon which he could claim such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. In all instances the expectation arises by reason of the conduct of the decision-maker, and is protected by the courts on the basis that principles of fairness, predictability and certainty should not be disregarded.*

*The existence of a legitimate expectation may have a number of different consequences; it may give standing to seek permission to apply for judicial review, it may mean that the authority ought not to act so as to defeat the consequence of the expectation without some overriding reason of public policy to justify its doing so, or it may mean that, if the authority proposes to act contrary to the legitimate expectation, it must afford the person either an opportunity to make representations on the matter, or the benefit of some other requirement of procedural fairness. A legitimate expectation may cease to exist either because its significance has come to a natural end or because of action on the part of the decision-maker.*

*In appropriate circumstances the existence of a legitimate expectation may require a public body to confer a substantive, as opposed to a procedural, benefit. In such cases the courts will not permit the public body to resile from the representation if to do so would amount to an abuse of power."*

[87] As a precondition to any consideration of a breach of legitimate expectation, the onus is on the court to examine whether there existed an expectation that was legitimate, to be met. The learned authors, Wade and Forsyth of **Administrative Law, 10<sup>th</sup> ed., 2009** at page 449 notes that:

*“It is not enough that an expectation should exist; it must be in addition to be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate for some countervailing consideration of policy or law.”*

[88] Though a party may claim that they have an expectation, if this is contrary to a policy or law, i.e. illegitimate, the failure to observe same, will not warrant judicial intervention under the principles of breach of legitimate expectation.

[89] In the circumstances, the claimant has asserted that she had a legitimate expectation that there would have been a formally appointed executive committee before a notice to remove Chico was given to her. As earlier adumbrated, the failure to formally appoint this committee, in and of itself, does not vitiate the work in which the de facto committee members would have carried out, until a later time, when it would have been formally appointed.

[90] The de facto executive committee’s actions were substantially compliant with the objectives and purpose of the Act. Consequently, the court observed that although the claimant may have had said expectation, in these circumstances, it was not ‘legitimate,’ as compliance with same, would yield a result, which is contrary to the objectives and purpose of the Act, from which, said expectation would have originated.

[91] This court also agrees with the dicta of Bingham L in **Regina v Inland Revenue Commissioners Ex parte M.F.K. Underwriting Agents Ltd. and Others - [1990] 1 WLR 1545** at paragraphs 1569H- 1570A when he stated that:

*“The doctrine of legitimate expectation is rooted in fairness. But fairness is not a one-way street. It imports the notion of equitableness, of fair and open dealing, to which the authority is as much entitled as the citizens...”*

[92] This court has already pronounced on the absence of any facts, pointing to the claimant being treated unfairly, by the defendants. In fairness, the claimant should be restricted from asserting that she, in fact, had a legitimate expectation. The facts, as this court understands them, do not support said assertion.

[93] In the circumstances, there is no legitimate expectation as could serve to properly enable this claimant to succeed in this claim.

### **CONCLUSION**

[94] This case before the court, concerns the interpretation of relevant statutory provisions, which in the circumstances, may be embodied the primary issue *whether the Tribunal and the Commission had jurisdiction to hear and determine the complaints before them?* The court, having applied the relevant principles, arrived at a conclusion that was different from that of the claimant.

[95] Upon the conclusion that the defendants had jurisdiction, the court then analyzed the supporting grounds, as adumbrated by the claimant, and has found that, on the facts and in these circumstances, the legal thresholds were not met, to warrant the reliefs sought.

### **APOLOGIES**

[96] The delay in the delivery of this judgment is regretted; and no words can be proffered to provide any explanation for same.

### **DISPOSITION**

[97] It is hereby ordered that:-

- (1) The claimant's application for relief by means of judicial review is denied;
- (2) No order as to costs, pursuant to **CPR 56.15 (5)**; and
- (3) The 1<sup>st</sup> defendant shall file and serve this order.

.....  
**Hon. K. Anderson, J.**