

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN
3 CIVIL DIVISION
4
5

Cause No: G 426/2011

6 IN THE MATTER OF THE ROADS LAW (2005 REVISION)
7 AND IN THE MATTER OF THE LAND ACQUISITION LAW
8 AND IN THE MATTER OF A COMPENSATION CLAIM BY:

9 ABSHIRE BODDEN and the Executors of the Estate of HAROLD BODDEN, being
10 GENE THOMPSON and ALFONZO WRIGHT: Block 28C, Parcel 1

11 AND

12 The Executors of the Estate of HAROLD BODDEN, being GENE THOMPSON and
13 ALFONZO WRIGHT: Block 28C, Parcel 178
14

15 BETWEEN:

16 THE NATIONAL ROADS AUTHORITY
17 ACTING BY THE DIRECTOR OF LANDS
18 AND SURVEY
19

20 APPELLANT
21

22 AND:

23 ABSHIRE BODDEN and the Executors of
24 the Estate of HAROLD BODDEN, being
25 GENE THOMPSON and ALFONZO
26 WRIGHT, Block 28C, Parcel 1
27

28 RESPONDENTS/APPLICANTS
29

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31 Appearances:

Ms. Dawn Lewis of the Attorney General's
Chambers for the Appellant

34 Ms. Kate McClymont of Broadhurst LLC
35 for the Respondents
36

37 Before:

The Hon. Mr. Justice Charles Quin

38 Heard:

7th November 2012
39
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1 **Preamble**

2 *This Judgment must be read in conjunction with the Judgment of the Hon. Mr. Justice*
3 *Charles Quin in this Cause, dated the 23rd July 2012.*

4
5 **JUDGMENT**
6

7 1. On the 23rd July 2012 I granted the Appellant, namely the National Roads Authority
8 (“NRA”), acting by the Director of the Cayman Islands Lands and Survey
9 Department (“Lands & Survey”), leave to appeal to the Cayman Islands Court of
10 Appeal (“CICA”) in terms of its Summons dated the 30th March 2012 as follows:

- 11 • *That the Appellant be granted leave to appeal to the Court of*
12 *Appeal pursuant to s.11(5)(b) of the CICA Rules, against that part*
13 *of the Order of the Honourable Chief Justice made on the 27th*
14 *February 2012 and filed on the 28th March 2012 in Cause Number*
15 *426 of 2011 that states: “(a) the costs awarded to the Respondents*
16 *pursuant to the Roads Assessment Committee decision delivered on*
17 *the 29th September 2011 are payable on an indemnity basis; and*
18 *(b) that the costs of the Respondents cross Summons dated the 25th*
19 *October 2011, as it relates to payment of costs arising from the*
20 *Road Assessment Committee’s decision, delivered on the 29th*
21 *September 2011 are awarded to the Respondents/Applicants on an*
22 *indemnity basis.”*



1 2. In relation to the Summons dated the 12th July 2012, and the Amended Summons
2 dated the 13th July 2012 filed by the Respondents – namely Abshire Bodden and the
3 Executors of the Estate of Harold Bodden, being Gene Thompson and Alfonzo
4 Wright, I mistakenly ruled that I did not have jurisdiction to hear this application
5 and followed the decision of the learned Chief Justice in *Streeter and K Coast*
6 *Development v. Immigration Board and Governor-in-Council* 1999 CILR 264.

7 3. At the time of this hearing I was unaware of s.33 of the Court of Appeal Law (2011
8 Revision) which reads:

9 “All the powers conferred by this Law, any other Law or rules of court on a
10 single judge (of the Court of Appeal) may, for all purposes, be exercised by a
11 Judge of the Grand Court in the same manner as they may be exercised by a
12 single Judge and subject to the same provisions in such exercise shall for all
13 purposes be as valid as if that power had been exercised by a single judge.”

14

15 4. In light of s.33 Crown counsel, Ms. Lewis, on behalf of the Appellant, now
16 concedes that I do have jurisdiction to hear and adjudicate upon a proper
17 application for leave to appeal out of time.

18 5. I find that pursuant to s.33 of the Court of Appeal Law and r.11(6) of the Court of
19 Appeal Rules I have jurisdiction to hear the Respondents’ application for leave to
20 appeal out of time. In accepting this submission I follow and apply the decision of
21 the learned Chief Justice in of *Internet Financial Services v. Britcay House Ltd.*
22 [2006] CILR Note 36.



1 6. The test for granting leave to appeal out of time in the Cayman Islands involves the
2 four considerations set out by the learned Chief Justice Smellie in *Streeter and K*
3 *Coast Development v. Immigration Board and Governor-in-Council* and are:

- 4 a) The likelihood of success;
- 5 b) The length of the delay;
- 6 c) The reasons for the delay;
- 7 d) Prejudice to the Respondents.



8 7. The Respondents submit that the learned Chief Justice accepted that the
9 Respondents' Appeal was limited to the grounds of Appeal recorded in s.8(1) of the
10 second Schedule of the Roads Law, but did not accept their submission that
11 s.8(1)(a), which allows an Appeal on the ground that "*the extent of the interests are*
12 *right and the portion of land has been wrongly determined*" is a reference, not to
13 the merits or quantum of the award, but rather to the competing interests in land as
14 may be claimed amongst various claimants.

15 8. The learned Chief Justice found instead at paragraph 29 of his Judgment that
16 s.8(1)(a) implies a right of appeal of determination of the value of interests and
17 rights in land.

18 9. The Respondents submit that as a consequence of the learned Chief Justice's
19 finding regarding the interpretation of the grounds of appeal in s.8(1) of the Second
20 Schedule of the Law, any appeal to the Grand Court is a hearing de novo on the
21 merits of the RAC decision.

1 10. The Respondents submit that the learned Chief Justice erred in finding the words
2 *“the extent of the interests are right and the portion of land has been wrongly*
3 *determined”* include an assessment of the extent of the “value” of the interest or
4 right, having been wrongly determined, as such an interpretation would allow an
5 appeal on all the merits and factual findings made by the Roads Assessment
6 Committee (“RAC”) and therefore, as found by the learned Chief Justice, allow an
7 appeal to the Grand Court to be a hearing *de novo*.

8 Furthermore, the Respondents submit that that could not have been the intention of
9 the Legislators because it would make s.8(1) of the second Schedule of the Roads
10 Law redundant – which section, the Respondents submit, is intended to limit the
11 grounds of appeal.

12 11. I have reviewed the submissions from the Respondents’ counsel and I find that the
13 Respondents’ Appeal has a real, and not fanciful, prospect of success.

14 12. In relation to the Respondents’ delay in filing their application for leave to appeal
15 out of time, I find that the reasons contained in paragraph 4 of the first affidavit of
16 Rozlyn Glanfield, filed on the 16th July 2012 and in paragraphs 23 and 24 of the
17 Respondents’ Skeleton Argument, are reasonable, particularly as they relate to:

18 a. The Respondents’ inability to rely on the award of indemnity costs portion of
19 the Order to meet the costs of a Queens Counsel for this matter, due to the
20 Appellant’s bid to appeal this portion of the Order; and



1 b. The fact that Mr. Abshire Bodden is a man of advanced years and in poor
2 health, who has been hospitalized on a number of occasions, therefore resulting
3 in difficulties in his counsel being able to receive timely instructions from him.

4 13. The general test for leave to appeal is set out by the then Master of the Rolls Lord
5 Wolfe in the English Practice Direction (Court of Appeal; Leave to Appeal
6 Skeleton Arguments) 1999 1 W.L.R. at paragraph 10 on page 2:

7 *“... the general rule applied by the Court of Appeal and thus the relevant basis*
8 *for first instance courts deciding whether to grant leave is that leave will be*
9 *given unless an appeal would have no realistic prospect of success. A fanciful*
10 *prospect is insufficient.”*

11

12 14. I accept the Respondents’ submission that the threshold for the granting of leave to
13 appeal is quite low, in that, the Respondents must only show that the Appellant has
14 a realistic, and not fanciful, prospect of success.

15 15. Clearly, the Respondents must demonstrate that they have an arguable case. And, in
16 deciding whether the Respondents have such a case, the bias, as the former Master
17 of the Rolls Lord Donaldson on Lymington expressed it in *The Iran Nabuvat* 2
18 1991 WLR 1115 at paragraph C on page 1117:

19 *“...must always be towards allowing the full court to consider the complaints of*
20 *the dissatisfied litigant and the justification for leave to appeal.”*

21

22 16. I have considered the evidence before me and the submissions from both counsel
23 and I will grant the Respondents leave to appeal.

1 17. I find that the Respondents' appeal has a realistic prospect of success, It is a matter
2 that, as the former Chief Justice Sir Dennis Malone in matter of Universal and
3 Surety Company Limited [1992-1993] CILR 152 stated at line 34 on page 159 that:

4 *"...the issue is one of importance upon which further argument and the decision*
5 *of the Court of Appeal would be to the public advantage."*
6

7 18. Accordingly, and pursuant to the decision of the Cayman Islands Court of Appeal
8 in *Smith v. Smith* [2004-2005] CILR I modify my Judgment dated the 23rd of July
9 2012 and withdraw paragraphs 44 and 45.

10 19. I therefore grant the Respondents leave to appeal out of time and leave to appeal to
11 the Court of Appeal pursuant to their Summonses dated the 12th July 2012 and the
12 13th July 2012.

13 20. As no Order was drafted and perfected, I will sign an Order reflecting my Ruling of
14 the 23rd July 2012 with paragraphs 44 and 45 withdrawn, and this Ruling granting
15 the Respondents leave to appeal out of time and leave to appeal to the Court of
16 Appeal.

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18 **Dated this the 19th November 2012**

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24 **Honourable Mr. Justice Charles Quin**
25 **Judge of the Grand Court**

