

IN THE SUPREME COURT OF BELIZE, A.D., 2007

CLAIM NO. 492

BETWEEN ( DAVID GEGG CLAIMANT  
(  
(AND  
(  
(THE HON. FLORENCIO MARIN  
(MINISTER OF NATURAL RESOURCES DEFENDANT  
(AND THE ENVIRONMENT

BEFORE: HAFIZ J.

Mrs. Naima Barrow-Badillo for Claimant  
Ms. Pricilla J. Banner for Defendant

**J U D G M E N T**

1. The Claimant David Gegg is a Businessman of 950 Bella Vista, Belize City, Belize.
2. The Defendant is Hon. Florencio Marin, who was the Minister of Natural Resources. The Government has since changed. However, the Defendant is really the Government of Belize.
3. On 6<sup>th</sup> December, 2007, permission was granted under Rule 56.4 (2) of the **Supreme Court (Civil Procedure) Rules 2005**, for the Claimant to file judicial review proceedings to review and quash the decision of the then Minister to cancel some several

permits granted to the Claimant. On 14<sup>th</sup> December, 2007, the Claimant filed the present judicial review proceedings challenging the Minister's decision.

#### **The Claimant's complaint**

4. The facts as shown in the affidavit of the Claimant is that on or as of the 1<sup>st</sup> day of August, 1995, he acquired a lease from the Government of Belize for a parcel of land designated as parcel 3566/1, Block 16, Caribbean Shores Registration Section for a term of thirty years commencing on the 1<sup>st</sup> August, 1995. On or about the 5<sup>th</sup> August 1998, he duly mortgaged his interest in the said parcel to secure the repayment of BZ\$50,000.00 to the Atlantic Bank Limited. Then in about 20<sup>th</sup> October, 2005, he applied for permission to purchase the parcel and the Government agreed to sell. He purchased the freehold interest in the said Parcel 3566/1 for the purchase price of BZ39,149.96. He is still awaiting the delivery of a Certificate of Title for the said parcel No. 3566. He had applied for and acquired Parcel No. 3566 for the specific purpose of building a marina which was disclosed in his original application to lease submitted to the Government in or about August 1995.
  
5. The Claimant is a director and shareholder of Discovery Expeditions Limited which is in the business of providing tours to tourists in Belize. He is also a director and shareholder of Cruise Expeditions Limited which is also in the business of providing tours and services specifically to cruise ship passengers visiting Belize. Together Discovery Expeditions Limited and Cruise Solutions Limited own and

operate in excess of 20 boats in the course of their business. A number of the boats of these companies are kept in the canals in the area of Bella Vista and the Belize City Council had brought legal action to prevent such further use of the canals.

6. The marina was primarily intended to function as a base of operation for and to accommodate the boats of the above-mentioned two companies. The marina was however designed to accommodate about 56 boats in total in order to make the same commercially viable.

When the Government agreed to sell the freehold interest in Parcel 3566/1, the Claimant engaged the services of Ian Morrison of Enviro-Plan Limited to develop the idea of the construction of the marina and to secure all necessary permits for the constructions. They secured the necessary permits in relation to the project. In or about the 11<sup>th</sup> day of April, 2007 on the basis of permits and plans secured, the Claimant applied for and secured a loan from Atlantic Bank Limited for BZ1,400,000.00 to construct the marina and related developments thereon. The loan has been partly disbursed and utilized and attracts interest at the rate of 15 per cent per annum. The utilized portion of the loan amounts to BZ\$445,000.00.

7. On the 27<sup>th</sup> day of August, 2007 the Claimant received a letter dated the 8<sup>th</sup> day of August, 2007 from the Commissioner of Lands and Surveys in the Lands and Surveys Department of the Ministry of Natural Resources and the Environment informing him that the Ministry had decided to revoke the

permits granted to him in respect of the construction of a Marina and Pier. See Exhibit "D.G. 6" for letter.

8. It is against these revocation of the permits the Applicant is seeking to quash the decision of the Minister to do so.

### **Grounds**

9. The grounds on which relief is sought are that:
  - (1) The Defendant's decision to cancel the Permits was made in breach of the principles of natural justice in that the Complainant was never given prior notification that the Defendant was considering canceling the Permits and the Complainant was never given any opportunity to be heard in relation thereto;
  - (2) The Defendant decision to cancel the Permits was in breach of the Claimant's legitimate expectation that the Permits would not be cancelled except in accordance with their terms and conditions;
  - (3) The Defendant's decision to cancel the Permits was unreasonable as the power to cancel Permits was exercised for a purpose alien to that for which they were granted in that the Defendant took into account irrelevant considerations; and

(4) The Defendant's decision to cancel the permits was motivated by inappropriate political consideration arising out of the very public nature of opposition voiced and widely publicized against the proposed marina and pier.

### **Evidence**

10. The Claimant deposed that the Defendant's decision to cancel the Permits was made in breach of the principles of natural justice in that he was never given prior notification that the Defendant was considering canceling the Permits and he was never given any opportunity to be heard in relation thereto.
11. The Claimant says that the permits cancelled by the Defendant were all granted subject to express conditions set out in the Permits and he was aware that the Permits may have been cancelled if there was a failure to adhere to any of the conditions contained therein. He said that the Defendant cancelled the Permits although all the conditions of the Permits were observed. He deposed that the Defendant's decision to cancel the Permits was in breach of his legitimate expectation that the Permits would not be cancelled except in accordance with their terms and conditions.
12. The Claimant further deposed that at all times he was aware that the Permits may have been cancelled if there was a failure to adhere to any of the conditions contained therein. As there was strict compliance with the terms and conditions

on which the permits were granted and the Defendant nonetheless cancelled the permits, the Defendant's decision to cancel the permits was obviously based on some unknown and unrelated factor. That the Defendant's decision to cancel the Permits was unreasonable as the power to cancel Permits was exercised for a purpose alien to that for which they were granted in that the Defendant took into account irrelevant considerations.

13. The Claimant deposed that in late April 2007 he visited with Romel Perdomo of Travellers Liquors in relation to unrelated business and informed him verbally of the project that was then about to commence. A number of hours after leaving the meeting he received a call informing him that the Perdomos were expressing opposition to the Marina Project in West Landivar. Unknown to him, members of the Perdomo Family lived in the general area of the proposed development. At the time he was having meetings with the Belize City Council to secure approval of the building plans for the marina facility. He was later informed by the Belize City Council that they would be holding public consultations on the project. In anticipation of the consultations, certain residents of the area canvassed the neighbourhood and secured significant opposition to the project by inter alia misrepresenting the description of the project to the residents. The public consultations thereafter held demonstrated significant public opposition to the project. See paragraphs 27 – 32.
14. The Claimant further deposed that the Defendant's decision to cancel the permits was motivated by inappropriate political

considerations arising out of the very public nature of opposition voiced and widely publicized against the proposed marina pier.

15. The Claimant says that on the 7<sup>th</sup> day of September, 2007 his lawyer wrote to the Commissioner of Lands and Surveys in the Lands and Surveys Department of the Ministry of Natural Resources and the Environment on his behalf asking that the cancellation of the permits be reconsidered. However, he is not aware that the Minister has given any consideration to the matter in question or gave any response to the complaint which has been made.
16. Further, he deposed at paragraph 36 that on the 20<sup>th</sup> October, 2007 the Defendant, in the exercise of powers vested in him under section (6) subsections (1) and (3) of the National Lands Act, Chapter 191 of the Laws of Belize, Revised Edition 2003, sought to declare land which includes Parcel No. 3566 to be a public reserve.
17. Mr. Gegg also deposed to a further affidavit sworn to on 29<sup>th</sup> May, 2008 in which he said that on or about the 3<sup>rd</sup> day of May, 2007 the Belize City Council held a public consultation on the marina facilities he had proposed to build on Parcel No. 3566, Block 16, Caribbean Shores. He said both Jose Coye, the then area representative for Caribbean Shores, the constituency in which the marina was to be located, and Carlos Perdomo, the then United Democratic Party (UDP) standard bearer for the Caribbean Shores attended the public consultation and made their views known. He said that Mr. Perdomo appeared to champion the cause of the people

while Mr. Coye indicated his belief that as the representative of the people he was bound to submit to the will of the people.

18. Mr. Gegg said that after the public consultation, he employed Mr. Rayford Gordon to attend upon the residents of the West Landivar area of Belize City and explain the plans for his development in the area. Mr. Gordon was able to secure the signatures of some 92 residents signifying their agreement and support for the proposed development. See "D.G.8" for a copy of the list of signatories.
19. Mr. Gegg deposed that shortly thereafter, he was asked by Mr. Steve Mahler, the campaign manager for Mr. Coye, to attend a meeting with himself and Mr. Coye. At the meeting Mr. Coye stated that due to the proximity of the upcoming general elections and the Belizean people's general dissatisfaction with the PUP he found himself in a difficult position and felt that he was forced to support the people in West Landivar.
20. He further deposed that Mr. Coye asked him for his understanding as he felt that his political future could be affected by his response to proposed marina. Shortly after the meeting with Mr. Coye and Mr. Mahler, Mr. Gegg said that he received a call from the then Minister of Tourism, Mr. Godfrey Smith. Mr. Smith indicated to him that he intended to write an article in the Belize Times for his "Flashpoint" feature and asked that he provide him with an account of all that has transpired in relation to the proposed marina. He

said he provided the details requested of him and Mr. Smith wrote his article. See “D.G.9” for a copy of the article.

21. Mr. Gegg’s evidence is that shortly after the article appeared in the Belize Times, Mr. Smith called him again and asked if he would attend a meeting with the then Minister of Natural Resources, Mr. Florencio Marin and himself. He agreed to attend the meeting and shortly thereafter went to Belmopan City where he met initially with Mr. Smith who indicated that senior Cabinet ministers, including the then Prime Minister and Mr. Coye, had agreed that the Minister of Natural Resources, Mr. Florencia Marin would do whatever necessary to appear to support Mr. Coye and frustrate, at any cost, his plans for the Marina. Mr. Gegg exhibited a copy of a Press Release from the Ministry of Natural Resources dated 27<sup>th</sup> September, 2007 which shows that Hon. Florencia Marin, signed a Statutory Instrument officially declaring Parcel 3566, Block 16 of the Caribbean Shores Area a National Park under the National Lands Act. Further, that the area is officially declared as Dolphin Park – See Exhibit “D.G. 10”.
22. Mr. Gegg further deposed that upon hearing of the position that would be taken, he asked Mr. Smith what would happen if the PUP won the general elections. He said that Mr. Smith assured him that all his rights would be restored and that the project would be allowed to proceed. Mr. Smith then escorted him to a meeting with the Minister of Natural Resources, Mr. Florencio Marin who apologized for the actions which the Government of Belize would be taking and explained that the upcoming general elections was what has

motivated their decision as to the course of action. Mr. Marin indicated that he was prepared to compensate him with other suitable lands.

23. As a result of that, Mr. Gegg said that the then Deputy Commissioner of Lands, Mr. Rosado was then called into the meeting and instructed to accompany him on field trips in search of another portion of land that would be suitable for his plans. However, they were unable to identify any available lands suitable for his needs.
24. Mr. Gegg's evidence is that on or about late July or early August, 2007, he was informed that Ms. Tania Moody, representing the West Landivar committee, had been advised that the Minister of Natural Resources would be revoking all his permits for the Marina Development. However, he never received a letter from the Ministry of Natural Resources until the 27<sup>th</sup> August, 2007 which was dated August 8, 2007. See exhibit "D.G.6" to his first affidavit. He said that prior to receiving the letter informing him of the cancellation of his permits, he had received a letter from the Department of Environment ("DOE") dated July 31, 2007 in which it was indicated that there was an intention to review the Environmental Compliance Plan ("ECP") to address new developments and information coming to the DOE". See Exhibit "D.G.11".
25. Further, he deposed that on August 6, 2007 he wrote to Mr. Ismael Fabro, the Chief Environmental Officer of the DOE requesting that he be provided with "all new developments and information" that has come to the DOE by Wednesday

the 9<sup>th</sup> August, 2007. On the 6<sup>th</sup> August, 2007 Mr. Fabro wrote to him and informed him that as soon as the Department had reviewed the ECP and made the changes he would be forwarded with a copy for his comments or recommendations. See Exhibits “D.G.12 and 13”.

26. Mr. Gegg’s evidence is that Mr. Fabro never provided him with the promised copy of the revised ECP and as the letter informing him of the decision to revoke all permits granted to him was dated only two days after Mr. Fabro’s last letter to him, he doubted that the ECP was ever reviewed.
  
27. At paragraph 28 he deposed that on the 9<sup>th</sup> day of August, 2007 he wrote to the DOE reminding them of their history of seeking amendments if and when they felt that they were necessary and pointed out that they had no pending applications for amendments to their ECP and that there was no incorrect or misleading information contained in the ECP submitted, as had been alleged by Mr. Fabro in his letter of 6<sup>th</sup> August, 2007. See Exhibit “D.G.14” for copy of the letter written to the DOE on the 9<sup>th</sup> August, 2007.
  
28. At paragraph 29, Mr. Gegg’s evidence is that the proposal discussed at the public consultation was a proposal for the use of buildings the construction of which had already been approved in the ECP. That approvals would have been sought independently for improvements over and beyond those in respect of which approval was already in hand. But, if approvals for additional development would not have been had then the additional developments could have not been pursued. He said that neither himself nor Ian Morrison, the

project consultant and coordinator, had ever written to the City Council applying for trade licenses for the project nor were any such licenses required because the companies with existing licenses would merely be relocated. According to Mr. Gegg the reaction of the City Council was to the proposed larger development and not to that for which approval was already in hand.

29. Mr. Gegg at paragraph 31 said that it seems that the Government cancelled existing approvals on the basis of proposed developments that were not necessarily to be effected.

#### **The Defendant's answer**

30. For the Defendant one affidavit was filed by Ms Carren Williams who is the Principal Planner in the Physical Planning Section, Land and Survey Department, Ministry of Natural Resources and the Environment. She denies that the permits for the construction of a Marina and Pier issued to the Claimant were unlawfully revoked by the Defendant.
31. She deposed that on January 26, 2005 a written application was submitted to the Physical Planning Section, Ministry of Natural Resources by EnvironPlan Consultancy Limited for and on behalf the Claimant to construct a marina in front of Parcel No. 3566/1, Block 16, Graduate Crescent, West Landivar, Caribbean Shores Registration Section, Belize City in the name of David Gegg. See Exhibit "C.W.1" for application. Ms. Williams evidence is that the sketch

submitted to the Physical Planning Section in support of the application for the marina indicated that it was to be of the following description:

*“having T-shape projections with boat slips and boathouse. The main dock is not to exceed 325'-0” in length and 8'-0” in width, with slips on both sides, not exceeding 150'-0” in length and 8' in width respectively. Attached to these slips are 18 catwalks which shall not exceed 20'-0” in length and 4'-0” in width with spacing of 40'-0” c/c. A boathouse is attached at the tip of the main dock exceeding 20'-0” in width and 70'-0” in length.”*  
See paragraph 3 of affidavit.

32. Ms. Williams deposed that in February, 2005 an inspection was carried out by the relevant departments of the Ministry of Natural Resources as part of the process of considering the Claimants' application. As a result of the inspection, the Consultants were advised that applications for reclamation and for the construction of a seawall should be made, as they were required for the proposed Marina since a portion of the land was below sea level.
  
33. Ms. Willimas further deposed that Mr. Gegg obtained Environmental Clearance in June, 2005 for the construction of a marina located adjacent to parcel 3566/1 of the description and specifications mentioned in Paragraph 3 of her affidavit and an Environmental Compliance Plan (ECP) was prepared by the Department of the Environment, as is required under the Environmental Protection Act. See

“C.W. 2” and “C.W.3” respectively for the letter granting Environmental Clearance and the ECP.

34. Ms. Williams evidence is that the ECP stated clearly that the specific activities for which clearance was being granted were (1) the construction of a marina of 325 feet in length and 300 feet in width; (2) twenty four boat slips measuring 20 feet by 70 feet and a boathouse measuring 20 feet by 70 feet. The ECP also states that wanton disregard for conditions agreed upon will result in the revocation of all permits and licenses issued for the implementation of the project.
  
35. She said that subsequent to the issuance of the ECP, the Claimant was informed by letter dated August 9, 2005 that the Minister of Natural Resources and the Environment had granted him approval to construct a marina. (See Exhibit “C.W.4”). On September 8, 2005 the annual payment was made for the period September 2005 – September, 2006. A Marina and Pier Permit dated September 13, 2005 was issued to EnviroPlan Consultants Limited for and on behalf of the Claimant. The said Permit was approved by the Defendant subject to eleven requirements, including that the Marina shall be built according to the sketch submitted to the Physical Planning Section and an annual fee. The Permit also states that non-compliance with any of the conditions shall be grounds for revocation of the Permit. See Exhibit “C.W.5” for copy of permit.
  
36. At paragraph 10, Ms Williams deposed that by a letter dated November 21, 2006, the Claimant through EnviroPlan

Consultants Limited applied for permission to reclaim and create land in West Landivar, Belize City. See Exhibit "C.W. 6". And that on January 2, 2007 approval to reclaim the 12,000 square feet of land and to create 20,000 square feet of land and for the usage of the 66 foot beach reserve in front of Parcel No. 2566 was granted to Mr. Gegg. She said the licence was issued upon payment of the first annual payment of BZ \$2000 to the Land and Surveys Department. See Exhibit "C.W.7" for letter of January 2, 2007.

37. Ms. Williams further deposed that in or around February, 2007 the Claimant sought and obtained environmental clearance from the Department of Environment for further developments or amendments to the specifications of the Marina. An Environmental Compliance Plan First Amendment Agreement was entered between the Claimant and Department of the Environment. See Exhibit "C.W.8" for copy of the Environmental Compliance Plan First Amendment Agreement.
38. This Amended ECP according to Ms. William's evidence called for amendments including a water taxi check-in counter and snack shop, fuelling station, a 500 foot retaining wall, parking lot for 80 stalls, 2 3-storey office buildings, and an elevated restaurant. She said it was the Claimant's intention that certain structures be constructed over water.
39. Ms. Williams said that the amended ECP of February 13, 2007 specifically prohibited the erection of permanent structures on or over the seabed and that it required the

construction of buildings to be carried out with the approval of relevant agencies such as the Central Planning Authority and required the submission to the Department of Environment of all valid permits for the development.

40. Ms. Williams said that the grant of environmental clearance is key to a development of this nature but which was subject to permits and/or recommendations of entities from several Departments which include Land and Surveys Departments, the Fisheries Department, the Forestry Department and the Belize City Council. Further, if the interested Departments or entities object to the development or declined to issue required licenses or approvals then the permit could properly be refused or revoked.
  
41. At paragraph 17, Ms. Williams said that it became clear from a letter dated March 6, 2007 from the Claimant that the scope of the original project had changed significantly as Mr. Gegg sought permission from the Physical Planning Section to construct buildings over water, as well as permission to construct a boat house, a fuel pump area and a restaurant, as shown on an annexed sketch dated January 31, 2007. See Exhibit "C.W. 9"
  
42. Ms. Williams said that the large scale development being proposed by the Claimant on property which is located in a residential area was of much concern to the Defendant, particularly since the progress of that development and the grant of the permits was subject to the overriding public interest and must take into consideration the input of the local authority. Also that, at a public hearing on the matter,

which was held on or around May 3, 2007, the Claimant and EnviroPlan Consultants Limited gave a presentation on the proposed development and which also included condominiums. Ms. Williams evidence is that unknown to the Defendant the proposed development was therefore of an even larger scale than was indicated on the sketch submitted to the Defendant on March 6, 2007. See paragraphs 18 and 19 of her affidavit.

43. Ms. Williams further deposed that a project of that scale certainly required an Environmental Impact Assessment, among other things, and the Defendant could not entertain the Claimant with any further permits at that point. That prior to the revocation of the permits, the Defendant also informed Mr. Gegg through the Department of the Environment of its intention to review the ECP to address new developments, in particular the matter of the condominiums and the previously undisclosed scale of the intended development. She said that Mr. Gegg was also well aware of the consequences of noncompliance as stated in the ECP and the Permits.
  
44. At paragraph 23 Ms. Williams deposed that the Belize City Council strongly objected to the development, and voiced its objections at the public hearing. The Department also learned at the public hearing that the Belize City Council had refused to grant the Claimant required approvals, including a trade license, which would have given effect to both his proposed business and to the permit to construct the Pier and Marina.

45. Ms. Williams evidence is that the scope of the Claimant's development also sparked much public concern, which was expressed in a series of letters sent to the Defendant particularly from the West Landivar Community, which emphatically objected to the proposed development. See Exhibit "C.W. 10".
46. At paragraph 25 Ms. Williams admitted that the strongly canvassed social concern with regard to the development was a factor in coming to its decision; however, it was not the primary or the only consideration for the revocation of the permit in question.
47. She further deposed that at any rate a development of the scale intended by the Claimant would have required the conduct of an Environmental Impact Assessment and consequent input from the public, particularly the community to be affected by the development.
48. Ms Williams' evidence is that the Claimant really had no permit as of October, 2006 since he had failed to pay the annual fee for the period September, 2006 – September, 2007. Further, the Claimant had a Marina and Pier permit strictly and solely for the initial development proposed, and not in respect of any modified design. Also in light of the refusal of the Belize City Council to support the development or to grant a trade license to the Claimant, the existing permits issued by the Defendant would have served no purpose in progressing with the development. She said that it is for these reasons that the Defendant lawfully took the

decision to officially revoke the permits to the Claimant to construct a pier and marina.

### **Submissions by the Claimant**

49. Learned Counsel, Mrs. Badillo for the Claimant referred to two cases in support of her argument on the breach of natural justice and legitimate expectation. In the case of **R v Secretary of State for Health, Ex parte United States Tobacco International Inc. (1992) Q.B. 353** it was held at page 354 inter alia that the exercise of discretion by the Secretary of State to ban oral snuff in the public interest could not be fettered by any moral obligation owed to the applicants and therefore the applicants could not rely on a legitimate expectation that if they performed their obligations under the agreement to control the sales of their product, the Secretary of State would permit their operation to continue. Also, that in granting the application the Secretary of State had a duty under the Act to consult the applicants before making the Regulations and, having regard to the history of the Government's dealing with the applicants and the very serious effect the Regulations had on the Applicants' commercial undertaking, fairness required that the applicants be informed of the matters which had caused the committee to re-evaluate the risk to health in the use of oral snuff. That the advice of the independent experts was not to be treated as if it were confidential advice given to the minister by civil servants. That since the Secretary of State had neither disclosed nor given the applicants an opportunity to make representations on the expert advice he had

received before the enactment of the Regulations, the Regulations would be quashed.

50. Mrs. Badillo referred to page 371 where Taylor L.J. said: *“It may well be that, in the end, the decision reached by the Secretary of State may prove to be wise and in the public interest, but such a draconian step should not be taken unless procedural propriety has been observed and those most concerned have been treated fairly.”*
  
51. In the case of **R v. Huntingdon District Council, Ex parte Cowan and another** (1984) 1 W.L.R. 501 where it was held that although there was no express provision in the Local Government Act as to the procedure to be adopted by a local authority when considering an application for an entertainments licence, the exercise of that licensing function was one to which the rules of natural justice applied; that the local authority was under no duty to give the applicants an oral hearing but the requirements of natural justice did place a duty on the local authority to inform the applicants of the substance of any objections or representations made and to give the applicants an opportunity to reply; and that, since the local authority had failed in its duty, the court would grant and order of certiorari to quash the decision.
  
52. Learned Counsel also referred to page 508 where Glidewell J. said: *“The exercise of a licensing function, in my judgment, by any authority, is one to which the rules of natural justice – including the requirement of giving notice of the substance, at least, of objections, and giving some*

*opportunity for the applicant to respond to those objections – would normally apply.”*

Learned Counsel submitted that the Claimant, Mr. Gegg did not breach any conditions. Further, that it was unreasonable that six months after the permits were given the licence was revoked. She submitted that there were no material changes after the permits were granted. She further submitted that what changed was the elections and public opposition voiced.

Learned Counsel submitted that the Claimant was never given any information of the additional developments in accordance with section 52 of the **Environmental Protection Act, Chapter 328** which provides for Enforcement Notices to be served on the contravention of any conditions of permits granted.

### **Submissions by the Defendant**

53. The Defendant opposed all four grounds by the Claimant. On the ground of natural justice, Ms. Banner submitted that there is no breach of natural justice because the evidence of Mr. Gegg suggests that not only was he put on full notification that his permits would be rendered useless and consulted prior thereto, but also that he was complicit in the actions taken by the Defendant. Learned Counsel referred to paragraphs 14 to 21 of Mr. Gegg's affidavit sworn to on 29<sup>th</sup> May, 2008 where he deposed of his meeting with Mr. Smith where he learned about the position that would be

taken and what would happen if the PUP won the general elections and also the offer to get other suitable lands.

54. Learned Counsel submitted that the meeting between the Claimant and the Defendant operated to allow the Claimant, in the face of the Defendant's position, to make his objections known. In that regard, the Claimant was given an opportunity to state his case before his plans for the marina were "frustrated". The fact that this was done by virtue of oral representations as opposed to written does not cause a defect in the procedure. Counsel referred to the case of ***Francisca Jules Wattley v The Attorney General*** **Claim** No. SLUHCV2004/0052, ECSC High Court (Civil) where a meeting of the Claimant with relevant government officials was found to afford the Claimant an opportunity to put her case. Mr. Justice Hariprashad-Charles J stated at paragraph 26 as follows:

I now turn to the *audi alteram partem* rule of natural justice. In her affidavit, Mrs. Wattley referred to her meeting with Mr. Francois and other officials of relevant ministries. There she was afforded an opportunity to put forward her case and due considerations were given to it.

In ***Fisher v The Minister of Public Safety and Immigration***, Lord Lloyd of Berwick stated at paragraph 23 of the judgment:

*'Legitimate expectations do not create binding rules of law...a decision maker can act inconsistently with a legitimate expectation which he has created, provided he gives adequate notice of his intention to do so, and provided he gives those who are affected an opportunity to state their case.'*

55. Learned Counsel therefore submitted that the meeting held between the Claimant and the Defendant provided such an opportunity to the Claimant and put the Claimant on notice of the policy change of Government.
56. Ms. Banner further submitted that the oral hearing and consultation between the Defendant and the Claimant evidences a case of complicity, waiver and acquiescence by the Claimant which ought to bar the relief being requested. She said that on the Claimant's own admission he was complicit with and entered into a gentleman's agreement the terms of which were that his rights in relation to the pier and marina would be secondary to the policy change of Government and the public outcry from the community affected but that such rights would be restored once the PUP had secured the election. She said that the Claimant was given notice by both Mr. Smith and the Defendant that his "plans for the Marina" would be frustrated. In that regard, Counsel submitted that the Claimant fully intended to comply with the gentleman's agreement in entering negotiations to obtain another piece of land to effect his purpose. Counsel submitted that Mr. Gegg's actions subject to the consultative meetings where he was given a right to raise objections indicates that as a result of the meeting with the Defendant he would search for another piece of land with the assistance of Government employees.
57. Ms. Banner submitted that it is unconscionable to permit the Claimant's claim that his right to natural justice has been breached, particularly in view of his own admissions of complicity in the administrative decisions of the Defendant. She submitted that the Defendant relied on the Mr. Gegg's

conduct subsequent to their meeting as well as Mr. Gegg's apparent failure to voice his objections in his consultation with the Defendant in his administrative decision-making process.

58. Learned Counsel submitted that the instant claim represents itself as one in which the Claimant approbates and reprobates. The Claimant adopted a position of complicity upon which the Defendant relied. The Claimant is estopped from now impugning the decision of the Defendant.
59. Ms. Banner referred to the case of **CC v Judge William Early & Ors.** [2006] IEHC 147 where Justice MacMenamin pronouncing on approbation and acquiescence quoted the case of *MQ v The Judge of the Northern Circuit* (Unreported, 14<sup>th</sup> November, 2003, p. 51) as follows:

*“There is another way in which the actions of the accused person throughout 1999 and 2000 can be considered. As previously stated he was fully and completely aware of the moves by the D.P.P. as and from January 1999. He was brought to the District Court within one week or so of having been arrested. He was thereafter part of and in the judicial process. This was a process which in the absence of challenge continued up to and including his trial. He chose to adopt this route. He elected to contest allegations on their merits. He was perfectly entitled to so do. Having done so however I am of the view that by his conduct he must be taken as having surrendered, waived, or abandoned his constitutional rights, and his rights to natural justice which I have above identified. That one can so do is not in dispute. See the State (Nicolaou) v. An Bord Uchtála [1966] I.R. 567 and G. v. An Bord Uchtála [1980] I.R. 32. Once an individual without other disability has full knowledge of the relevant circumstances and once that can be established or inferred from his conduct, then he will be taken to have unambiguously surrendered such rights. The same applies to natural justice. See Corrigan v. Irish Land*

*Commission [1977] I.R. 317 and O'Brien v. Bord na Mona (1983) IR 255*

*As a result of this separate ground I would conclude that he cannot attempt to re-establish a position which is open to him in January 1999 but which, as of now, has been superseded by a process which he willingly submitted.”*

60. On the second ground of legitimate expectation Ms Banner submitted that the Claimant fails to properly make out its case because the Claimant asserted that in his meeting with the Defendant he was told that all his plans regarding the Marina would be frustrated but nowhere in his Third Affidavit (which is the Second Affidavit in his claim for Judicial Review) did the Claimant state that when he was informed of the Defendant's intent that he strenuously objected to the plans. Learned Counsel submitted that Mr. Gegg's subsequent conduct indicated that he was actively involved in seeking an alternative property for the purposes of the marina and further he requested assurances of whether his rights would be restored if the PUP won the election.
61. Ms. Banner submitted that the only legitimate expectation that the Claimant was entitled to have, in view of his complicity, was that if the PUP won the general elections, the Claimant would have all his rights in relation to the Marina restored. He could only legitimately expect that the marina project would proceed particularly in the face of the Defendant acting inconsistently with the alleged legitimate expectation and the Claimant failing to voice any objections thereto. Learned Counsel again referred to **Francisca Jules Wattley v The Attorney General** *supra* where Mr. Justice Hariprashad-Charles J quoted the statement by Lord Lloyd of Berwick in *Fisher v The Minister of Public Safety and Immigration* – see paragraph 54.

62. Ms. Banner submitted that the logical inference to be drawn based on the Claimant's and Defendant's conduct is that the Claimant could have no legitimate expectation in the particular circumstances of the instant case. She submitted that the claim before the Court is merely a departure from that common design between the Claimant and the Defendant and other Government officials only insofar as it represents the Claimant's default plan in the event that the PUP lost the general elections, which it did.
63. On the ground of unreasonableness Ms. Banner submitted that factual matrix of the claim supports the Defendant in showing that the Defendant acted reasonably in the circumstances of the case. That the evidence indicates that the Claimant had conceived a business plan in the residential area of the Caribbean Shores far beyond that which was initially presented to the several licensing authorities of Government. That the first application made to both the Department of the Environment and the Physical Planning Unit of the Ministry of Natural Resources related to the construction of a pier and marina. Counsel referred to Exhibits CW1 to CW5 of the First Affidavit of Carren Williams dated 25<sup>th</sup> April 2008.
64. Counsel submitted that by letter dated November 21, 2006, the nature of the initial proposed project was expanded when the Claimant applied to the Physical Planning Unit, Ministry of Natural Resources for permission to reclaim and create land at the marina construction location. She referred to Exhibits "CW 6" and "CW 7" of the First Affidavit of Carren Williams dated 25<sup>th</sup> April 2008.

65. Counsel further submitted that in or around February 2007 the Claimant sought and obtained environmental clearance from the Department of the Environment for further amendments or developments to the specifications of the Marina. An ECP First Amendment Agreement was therefore entered into between the Claimant and the Department of the Environment. She referred to *Exhibit CW8 of the First Affidavit of Carren Williams dated 25<sup>th</sup> April 2008 which shows the* amendments as:

- i. a water taxi check-in counter and snack shop
- ii. a fuelling station
- iii. a 500 foot retaining wall
- iv. parking lot for 80 stalls
- v. 2 three storey office buildings
- vi. An elevated restaurant

66. Learned Counsel submitted that it was the Claimant's intention that the certain structures be constructed over water but that the amended ECP of February 13, 2007 specifically prohibited the erection of permanent structures on or over the seabed. Also, it required the construction of buildings to be carried out with the approval of Central Planning Authority and required the submission to the Department of the Environment of all valid permits required for the development.

67. Counsel referred to paragraph 17 of the First Affidavit of Carren Williams, where she said that the Claimant sought again to expand the scope of the project despite the fact that such expansion may have necessitated an environmental impact assessment. She submitted that the marina project

was continuously being expanded by the Claimant which necessitated a review by the Defendant. The Claimant himself implies not only that the project was conceived on a greater scale, but that in view of the expansion, severe opposition was being garnered from members of the Caribbean Shores Community, the Belize City Council and the Department of the Environment.

68. Ms. Banner referred to paragraph 29 of the Third Affidavit of the Claimant where he spoke of the expanding proposal and submitted that the evidence also indicates that prior to the revocation of the permits, other environmental clearances and permits were put in jeopardy due to the perceived expansion of the plans for the marina and the consequent public outcry by members of the community and licensing authorities alike. The question of approvals being granted by the Belize City Council in relation to the construction was uncertain due to its disapproval of the marina project in the residential area.
  
69. Ms Banner further submitted that the Department of the Environment itself, in receiving "*new information with respect to the proposed condominiums*" was reconsidering the environmental compliance plan. She referred to Exhibit DG13 of the Third Affidavit of David Gegg dated 29<sup>th</sup> May, 2008. Also that representations for the community were also expressed in a letter from Barrow and Williams dated 6<sup>th</sup> May 2007 on behalf of the said community.

70. Ms. Banner submitted that in view of the other relevant permits and environmental clearance being put in jeopardy for the marina project, the expanding nature of the project which would have required an environmental impact assessment and the serious public litigation and outcry against the proposed development, the Defendant's decision to revoke the permits was not unreasonable.
  
71. Learned Counsel submitted that the decision was not motivated by inappropriate considerations because the factual evidence in the case illustrates that there were converging interests as it relates to the marina project envisaged by the Claimant. The evidence indicates that the marina project was evolving into a major project with severe environmental consequences but in a piecemeal fashion without the necessary environmental safeguards being taken before the fact. It also indicates that had a proper environmental impact assessment been conducted from the inception of the project, the legitimate concerns of members of the public could have been canvassed and alleviated. Further, apart from the vocal concerns of the Belize City Council and the residents of the Caribbean Shores Community there were written concerns of the Department of the Environment. Counsel submitted that this ultimately led to a need to reassess the nature of the project as was being expanded and as was perceived by members of the public and misrepresented by the Claimant.
  
72. Learned Counsel submitted that certiorari is a discretionary remedy. In deciding whether to grant relief the court will take account of the conduct of the party applying and consider whether it has not been such as to disentitle him to relief,

particularly where such conduct is unreasonable and where the Claimant has acquiesced in the irregularity complained of or conducted himself in such a way as to waive his right to object.

73. Counsel further submitted that if the remedy is futile, an order for certiorari will not be made. The intentions expressed by both the Department of the Environment as well as the Belize City Council which must approve construction, is that the extent and nature of the construction envisaged in the residential area must be reviewed. Further, the permit revoked by the Defendant was only one of many permits required by the Claimant from various departments for the project to proceed and each is contingent on the next being granted. As such, this would be an inappropriate case for the grant of certiorari. She further submitted that the court has an ultimate discretion whether to set aside decisions, and may decline to do so in the public interest, notwithstanding that it holds and declares a decision to have been unlawfully made.
74. Counsel submitted that damages have not been proved by the Claimant.
75. Ms. Banner submitted that only two permits were revoked by Physical Planning Unit, that is (1) E.P. 4/05/18 and (2) E.P. 04/05/23 (See D.G. '6'. She submitted that they cannot revoke other permits.
76. Ms. Banner in reply to the case of **R v Secretary of State for Health, Ex parte United States Tobacco International**

Inc. supra cited by Mrs. Badillo submitted that this case can be distinguished from the case at bar because in this case a factory was being built and the Minister had a duty under the Act to consult such organizations.

77. As for the Notice under section 54 of the **Environmental Protection Act, Chapter 328**, Learned Counsel submitted this has to be issued by the Department of Environment and not the Minister. That the Department of Environment is not a party to this action.

#### **Submissions in reply**

78. Mrs. Badillo submitted that all permits were revoked and not only two.

79. Learned Counsel referred to section 17(7) of the **Environmental Protection Act**, where it provides that: *“The Minister may suspend or revoke a permit or vary its terms and conditions where the Minister considers it advisable to do so.”*

In this Act “Minister” means Minister charged with the responsibility for the Environment. Therefore, Counsel submitted that the Minister is the proper Defendant. There was no need to make the Department of Environment a party.

80. Learned Counsel further submitted that there is ‘no gentlemen agreement’. She said that the meeting occurred

after the licence was revoked. This is evidenced by the article “People v. David Gegg” published on August 16, 2007. Counsel referred to paragraph 14 of Mr. Gegg’s affidavit which was sworn to on 29<sup>th</sup> May, 2008.

81. Counsel submitted that Mr. Gegg was not complicit and she referred to paragraph 15 of the said affidavit. Learned Counsel submitted that the decision was made so he could not acquiesce. He was being informed about the decision to take his land away from him.
82. In answer to this proceeding being a ‘default proceeding’ Learned Counsel submitted that this proceeding commenced on 26<sup>th</sup> October, 2007 long before the general elections.
83. Mrs. Badillo Counsel submitted that in the case of **CC v Judge William Early & Ors.** supra the Applicants slept on their rights therefore the legitimate expectation argument was not applicable in that case. In this case, the Claimant had not slept on his rights.
84. Mrs. Badillo submitted that the right to be heard is undeniable. She referred to paragraph 8 – 021 of ‘**Judicial Review of Administrative Action**’ by de Smith, Woolf & Jowell.
85. Learned Counsel submitted that it was unreasonable to cancel the permits when the application was made to expand the project. Counsel referred to Exhibit C.W. ‘8’ and C.W. ‘9’ which shows that Mr. Gegg already had permission.

86. Mrs. Badillo submitted that the revocation of the permits were caused by inappropriate political considerations. Also, that the opposition was not justified by the people. That is why Mr.Gegg went out to get signatures.
87. As for the damages Counsel submitted that damages have been incurred as the Claimant bought land, and taken loan.

### **Determination**

88. Section **17(7) of the Environmental Protection Act, Chapter 328** of the Substantive Laws of Belize, provides for suspension or revocation of permits. It states as follows:

*“The Minister may suspend or revoke a permit or vary its terms and conditions where the Minister considers it advisable to do so.”*

Section 52 (1) of the said Act provides for **Enforcement notices** to be served on the contravention of any of the conditions of licences or permit granted under the Act. It states:

*52.(1) If the Department is of the opinion that any person is contravening the provisions of this Act or any regulations made thereunder or is contravening any condition of any licence, permit or any condition imposed under the provisions of this Act or regulations made thereunder or is likely to contravene any such condition, the Department may serve on him an enforcement notice.*

*(2) An enforcement notice shall –*

*(a) state the opinion of the Department in relation to the alleged contravention as provided in subsection (1);*

*(b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise;*

*(c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and*

*(d) specify the period within which those steps must be taken.*

*(3) A copy of an enforcement notice shall be served –  
(a) on the owner and the occupier of the land to which it relates; and ....*

*(4) An enforcement notice may require –  
(a) the suspension or cancellation of any permit, licence or approval granted or issued by the Department; ....*

89. Before making a determination on the grounds I will deal with the point raised as to enforcement notice and the proper party to this action. It is not in dispute that no enforcement notice was given to the Claimant as provided by section 52 of the Environment Protection Act. What is in dispute is whether the Department of Environment should have been a

party to this action since they are the ones responsible for issuing the enforcement notice. Ms. Banner's argument for the Defendant is that the Notice has to be issued by the Department of Environment and not the Minister and in this action the Minister is being sued and not the Department. I do agree that it is the Department who has to issue the notice but the fact that the Department is not named as a party does not mean that the Minister is not responsible for the failure to issue the notice. I have to agree with Mrs. Badillo's argument that since the Minister is charged with the responsibility for the Environment then he is the proper Defendant. In my view, it is unnecessary to name the Department of Environment as a party since this is a Department under the Ministry of Natural Resources and the Environment for which the Minister has responsibility. I am further fortified in my view since the Minister is the one with the power to suspend or revoke a permit. I therefore find that the Minister is the proper party to this action and is responsible for the failure by the Department to issue the enforcement notice under section 52 of the Act.

### **Breach of principles of natural justice**

90. The first ground complained about is that the Defendant's decision to cancel the Permits was made in breach of the principles of natural justice in that he was never given prior notification that the Defendant was considering canceling the Permits and he was never given any opportunity to be heard in relation thereto.

91. In accordance with section **17(7) of the Environmental Protection Act**, the Minister may suspend or revoke a permit or vary its terms and conditions where the Minister considers it advisable to do so. This is a discretionary power. In my view, this discretionary power should not be exercised without giving the Claimant a fair hearing. I agree with Mrs. Badillo that the right to be heard is undeniable.

92. Paragraph 8 – 021 of '**Judicial Review of Administrative Action**' by de Smith, Woolf & Jowell states:

*“Because the interest of the applicant, rather than the discretionary power of the decision maker, now founds a right to a fair hearing, a hearing is required in most situations where licences or other similar benefits are revoked, varied, suspended or refused; even where the decision – making power affords wide discretion to the decision maker. Thus a strong presumption exists that a person whose licence is threatened with revocation should receive prior notice of that fact and an opportunity to be heard.”*

93. In my view this is a case in which the Claimant should have received prior notice of that fact that his licence would be revoked and given an opportunity to be heard. The **Environmental Protection Act**, itself at section 52 (1) provides for **Enforcement notices** to be served on the contravention of any of the conditions of licences and to give the person time to remedy the situation. It is not the case where the Minister does the revocation arbitrarily.

94. I also agree with Mrs. Badillo's submission that the exercise of a licensing function by any authority is one to which the rules of natural justice would normally apply and this includes giving of notice of the substance of any objections and giving the applicant an opportunity to respond to those objections. See the case of **R v. Huntingdon District Council, Ex parte Cowan and another supra.**

The question is whether the Applicant in this case was given the substance of any objections and given an opportunity to respond to those objections. I find as a fact above that the Claimant was not served with any enforcement notices which would show the details of any contraventions of his permits.

95. I disagree with Ms. Banner that Mr. Gegg was consulted prior to the cancellation of his permits and that he was complicit in the actions taken by the Defendant. I find from the evidence that the meeting with Mr. Smith and Mr. Florencio Marin was not a meeting to give the Claimant an opportunity to make objections. This was a meeting to apologise to the Applicant for putting an end to his Marina Project and to offer him other lands. At this time the decision was already taken to revoke the permits. I agree with Mrs. Badillo that the decision was already made to revoke the licence and that meeting he was being informed of the decision to take his land away therefore Mr. Gegg could not have acquiesced in the decision making.

96. I further disagree with Ms. Banner for the Defendant that the Claimant admitted that he was complicit and entered into a

gentleman's agreement with the Defendant that his rights would be restored once the PUP wins the election. In my view, the evidence in no way suggest that there was a gentleman's agreement. Mr. Gegg upon hearing that he project would be frustrated asked Mr. Smith what would happen if the PUP won the general elections and he was told that all his rights would be restored and the project would be allowed to proceed. See paragraphs 16 and 17 of his second affidavit. In my view, this does not amount to an agreement. Further, Mr. Smith had no authority to enter into any agreement as he was not the then Minister responsible for the Ministry of Natural Resources and had no authority to grant or revoke permits.

97. Further, the fact that Mr. Gegg went in search for another piece of land does not show that he was in agreement to cancel his permit. That decision was taken before the meeting.
98. Even further, the evidence shows that the meeting with the Claimant, Mr. Marin and Mr. Smith took place after the article "People v. David Gegg" was written by Mr. Smith. The Newspaper 'BelizeTimes' shows that this article was written by Godfrey Smith on 'Thursday, 16 August 2007'. The meeting took place after the 16<sup>th</sup> August, 2007. Mr. Gegg received the revocation letter on 27<sup>th</sup> August, 2007. This letter is dated 8<sup>th</sup> August, 2007. See Exhibit "D.G. 6" of the Claimant's first affidavit. When this meeting took place the decision to revoke had already been taken and revocation letter dated was dated 8<sup>th</sup> August, 2007, was already prepared. Therefore, I disagree with Ms. Banner

that the Defendant relied on Mr. Gegg's conduct in his decision-making process.

99. The case of **Francisca Jules Wattley v The Attorney General** supra cited by Ms. Banner can be distinguished from the case at bar. In that case the Claimant was afforded an opportunity to put forward her case and due considerations were given to it. In my view, Mr. Gegg was not given an opportunity to put forward his case. He was being told of the decision that was taken.
100. Also, the case of **CC v Judge William Early & Ors.** cited by Ms. Banner can be distinguished from this case. The Claimant by his conduct in that case chose to waive his rights to natural justice. In the case at bar, my view is that Mr. Gegg did not surrender his natural justice rights.
101. There is no evidence from the Defence that the Claimant was given a hearing before the revocation of the permit which is for a Marina and Pier. Ms. Williams evidence is that prior to the revocation of the permits the Defendant informed Mr. Gegg, through the Department of Environment, of its intention to review the ECP to address new developments, in particular the matter of condominiums and the previously undisclosed scale of the intended development. This letter is exhibit D.G. '11' to the Claimant's further affidavit. In this letter the Department of Environment stated that it was considering comments made by Mr. Gegg regarding the construction of condominiums at a public meeting held in the West Landivar Area. It also stated that no such information was presented by Mr. Gegg

about the project to the DOE and drew Mr. Gegg's attention to section 50 of the EPA, Chapter 328 which states the provision for incorrect or misleading information. Mr. Gegg in response to this letter wrote to the DOE informing them that there was no incorrect or misleading information contained in the ECP. See Exhibit "D.G. 14".

102. The Defence has not proved that there was incorrect or misleading information in the ECP. They exhibited three letters written on behalf of the West Landivar residents showing opposition to the project and asking for cancellation of Mr. Gegg's lease. In the letter dated August, 2007 the West Landivar Citizens Action Committee reminded the Commissioner of Lands on the project being pursued on a public reserve land for West Landivar. The letter of 6<sup>th</sup> May, 2007 written to the Chief Environmental Officer states that it was revealed at a public meeting that David Gegg publicly admitted another phase to his project where he intends to construct condominiums. See Exhibit "C.W. 10" for these letters. Mr. Gegg was never given an opportunity to be heard on this allegation to construct condominiums. In any event, any further developments to the project would have to be approved. The permit already granted could not be revoked based on proposed developments. It should be revoked on breach of conditions of the permit. There is no evidence of a breach and no evidence that there was a hearing before the revocation. The revocation letter itself states no reason for canceling the permit. It states:

“ ....

8<sup>th</sup> August, 2007

Mr. David Gegg  
5916 Manatee Drive  
Buttonwood Bay  
Belize Cit

Dear Sir,

**RE: CANCELLATION OF PERMITS**

*“This is to inform you of the Ministry of Natural Resources and the Environment’s decision to **REVOKE** all permits granted to you in respect to the construction of a Marina and Pier vide Permit E.P. 4/05(18) at the West Landivar Area, Belize City, Belize District. Please disregard letter requesting payment for Land Creation, Reclamation and the Utilization of the Reserve vide E.P. 04/05(23). Payment for the Pier and Marina Permit was received for the period 9/2005 to 9/2006; annual payment for the period 9/2006 to 9/2007 is no longer required.*

*Any inconvenience caused is regretted.*

*Regards,*

*Mrs. Carren Williams  
Principal Planner  
For Commissioner  
Land and Surveys Department*

*Cc. Mr. Ian Morrison, Enviroplan Consultants Ltd.  
Ms. Tania Moody, Barrow and Williams.”*

103. This is all the information received by Mr. Gegg. There is no evidence of breach of the conditions of permit nor evidence of a hearing prior to the cancellation. This letter was copied to two persons. Mr. Ian Morrison was the person who obtained the permits for the Claimant. Ms Tania Moody was the attorney representing the residents of West Landivar. The fact that the letter was copied to Ms. Moody gives some indication that this permit was cancelled because of the objections to the project by some residents of the West Landivar Area and it is information to them that their request to cancel the permit was granted. Unfortunately, Mr. Gegg did not have the same privilege to be heard.

Under the circumstances, I find that the Defendant's decision to cancel the permits was made in breach of the principles of natural justice.

#### **Breach of legitimate expectation**

104. The second ground is that the Defendant's decision to cancel the Permits was in breach of his legitimate expectation that the Permits would not be cancelled except in accordance with their terms and conditions. Has legitimate expectation been denied to Mr. Gegg? The evidence is that the permits cancelled by the Defendant were all granted subject to express conditions set out in the Permits and Mr. Gegg deposed that he was aware that the Permits may have been

cancelled if there was a failure to adhere to any of the conditions contained therein. He said that the Defendant cancelled the Permits although all the conditions of the Permits were observed.

105. What is legitimate expectation? Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Service (the GCHQ case) 1985 A.C. 374 at 408** stated the concept as follows:

*“The decision must affect some other person either by depriving him of some benefit or advantage which either:*

- (i) he had been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do unless there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or*
- (j) he has received assurance from the decision maker that it will not be withdrawn, without giving him first an opportunity of advancing reasons for contending that they should be withdrawn.”*

106. Ms. Williams evidence for the Defence, at paragraph 9 of her affidavit is that the permit dated 13<sup>th</sup> September, 2005 was approved to the Claimant subject to eleven requirements, including that the Marina should be built according to the sketch submitted to the Physical Planning Section and an

annual fee. She said that the permit also states that non-compliance with any of the conditions shall be grounds for revocation of the permit. See Exhibit "C.W. 5" which shows the Permit for the Marina and Pier with its conditions and at Number 10 it states the grounds for revocation is non-compliance. From this evidence the Defendant is aware that the grounds of revocation is non-compliance with the conditions stated in the permit.

107. Ms. Banner in her submission referred to the **Francisca case** where Mr. Justice Hariprashad-Charles J quoted a statement by Lord Lloyd of Berwick in *Fisher v The Minister of Public Safety* where it was stated that a decision maker can act inconsistently with a legitimate expectation which he has created, provided he gives adequate notice of his intention to do so, and provided he gives those who are affected an opportunity to state their case.
108. From the above authorities it can be seen that a benefit conferred will not be withdrawn without rational grounds for doing so and that there would be an expectation of the right to the observance of the '*audi alteram partem*' rule of natural justice. Procedural fairness requires no more than that.
109. In my view, the Claimant should have had the benefit of the principle of legitimate expectation that his permits would not be cancelled except in accordance with their terms and conditions and prior to that would have been given an opportunity to respond to any breach of the conditions or given an Enforcement Notice in accordance with the

**Environmental Protection Act.** The evidence is that the permits were revoked and there is no evidence of breach of any of the eleven conditions of the licence. In my view, the application made to expand the project is not a breach of the conditions of his permit which he had already. That application could have been denied. Exhibits C.W. '8' and C.W. '9" show that Mr. Gegg already had permission. Further, the evidence is that the Applicant was not given an opportunity to state his case. He was informed of the decision made.

110. I disagree with Ms. Banner that the only legitimate expectation that Mr. Gegg was entitled to have was that if PUP won the general elections the Claimant would have all his rights in relation to the Marina restored. Here again, Counsel based her argument on the fact that Mr. Gegg was actively involved in seeking an alternative property and he requested assurances of whether his rights would be restored if the PUP won the elections. She also submitted that the claim before this court by the Claimant is a default plan in the event PUP lost the elections. Firstly, the Claimant's conduct in searching for another piece of land, in my view does not show complicity. This was done after being informed that his land would be taken away from him. This was not a meeting to tell him of a breach of the conditions of his permit. The reason for the meeting was totally alien from the conditions of his permits. In fact, the evidence is that before the meeting with Mr. Smith and Mr. Marin there was a previous meeting with Mr. Coye, the area representative for West Landivar. At the meeting, which occurred after Belize City Council held its public consultation

where there were objections to the project, Mr. Coye stated that due to the proximity of the upcoming general elections and the Belizean people's general dissatisfaction with the PUP he found himself in a difficult position and felt that he was forced to support the people in West Landivar. This in my view, is not a rational ground for revoking the permits granted to the Claimant.

111. On the second point of the default plan, I have to disagree with Ms. Banner that the claim issued by the Claimant is a default plan. The Claimant issued this action on 26<sup>th</sup> October, 2007, almost four months before the elections. He had not slept on his rights. I agree with Mrs. Badillo that in the **CC v Judge William Early & Ors.** case supra the Applicants slept on their rights therefore the legitimate expectation argument was not applicable. Mr. Gegg in the circumstances of this case is entitled to benefit from the principle of legitimate expectation.
112. In the circumstances therefore, I find that there has been a breach of the Claimant's legitimate expectation that his permits would have been cancelled in terms of their conditions.

### **Unreasonableness**

113. The third ground is that the Respondent's decision to cancel the Permits was unreasonable as the power to cancel Permits was exercised for a purpose alien to that for which they were granted in that the Respondent took into account irrelevant considerations. Is there evidence that the

Defendant took into account irrelevant considerations? Ms. Williams admitted in her evidence that (1) the strongly canvassed concern with regard to the development was a factor in coming to its decision to revoke the permits though it was not the only concern. The other considerations she stated was that (2) there was failure to pay the annual fee for the period September, 2006 – September 2007 and (3) that the development intended required the conduct of an Environmental Impact Assessment and input from the public, (4) Permit was not for modified design (5) Refusal of Belize City Council to grant trade licences. These considerations were not communicated to the Claimant before the cancellation of the permit.

114. It is necessary that I repeat the relevant evidence from both parties which led to the cancellation of the permit to determine whether irrelevant considerations were taken into account. The evidence by the Claimant reveals that the Belize City Council on 3<sup>rd</sup> May, 2007 held its public consultation on the marina facilities he proposed to build. He said that prior to the meeting certain residents of West Landivar canvassed the neighbourhood and secured significant opposition to the project by inter alia misrepresenting the description of the project to the residents. Shortly thereafter he attended a meeting with Mr. Coye who informed him that due to the elections and the public's dissatisfaction with the PUP he felt that he was forced to support the people of the West Landivar. Thereafter he met with Mr. Smith who told of the decision to frustrate the plans for the Marina because of the opposition of the people of the Caribbean Shores area. Shortly

thereafter, he met with Mr. Smith and Mr. Marin the Minister of Natural Resources who apologized for the actions which the Government of Belize would be taking but that he would be compensated with other lands. Also, that he was informed that Ms. Tania Moody, representing the West Landivar Committee, was told that that the Minister of Natural Resources would be revoking all his permits for the Marina Development. He received this letter of revocation on 27<sup>th</sup> August, 2007 which was dated August 8, 2007. On 20<sup>th</sup> October, 2007 Parcel 3566, Mr. Gegg's land for the Marina and Pier was declared to be a public reserve.

115. Mr. Gegg's evidence is that prior to receiving the letter informing him of the cancellation of his permits, he had receive a letter from the Department of Environment ("DOE") dated July 31, 2007 in which it was indicated that their was an intention to review the Environmental Compliance Plan ("ECP") to address new developments and information coming to the DOE. Mr Gegg said that on August 6, 2007 he wrote to Mr. Ismael Fabro, the Chief Environmental Officer of the DOE requesting that he be provided with "all new developments and information" that has come to the DOE by Wednesday the 9<sup>th</sup> August, 2007. On the 6<sup>th</sup> August, 2007 Mr. Fabro wrote to him and informed him that as soon as the Department had reviewed the ECP and made the changes he would be forwarded with a copy for his comments or recommendations. Mr. Gegg's evidence is that Mr. Fabro never provided him with the promised copy of the revised ECP and as the letter informing of the decision to revoke all permits granted to him was dated only two days after Mr. Fabro's last letter to him, he doubted that the ECP

was ever reviewed. He also gave evidence of the support for the project by people in the West Landiver area.

116. The evidence of Ms. Williams for the Defendant is that on 13<sup>th</sup> September, 2005 Mr. Gegg received the Marina and Pier permit. She said he was also given permission to reclaim and create land. Thereafter, Ms. Williams said that Mr. Gegg sought and obtained environmental clearance for further developments or amendments to the specifications of the marina. The amended ECP dated 13<sup>th</sup> February, 2007 states at paragraph 4.07.3 that: *“No permanent structures such as concrete structures for use of living quarters and restaurants, will be erected on or above the sea bed.”* She deposed that he further sought permission from the Physical Planning Section to construct buildings over water, permission to construct a boat house, a fuel pump and a restaurant. At paragraph 18 she said that this large scale development in a residential area was much concern to the Defendant as the grant of the permits was subject to the public interest. Also, that at a public hearing it was learnt that the Belize City Council had refused to grant the Claimant required approvals. At paragraphs 25 – 30 her evidence is:

*25. The Defendant admits that the strongly canvassed social concern with regard to the development was a factor in coming to its decision; however, it was not the primary or the only consideration for the revocation of the permit in question.*

*26. I would add that at any rate the development of the scale intended by the Claimant would have required the conduct of an Environmental*

*Impact Assessment and consequent input from the public, particularly the community to be affected by the development.*

*27. In fact, the Claimant really had no permit as of October, 2006 since he had failed to pay the annual fee for the period September, 2006 – September, 2007.*

*28. Further, at all material times the Claimant had a Marina and Pier permit strictly and solely for the initial development proposed, and not in respect of any modified design.*

*29. In light of the refusal of the Belize City Council to support the development or to grant a trade license to the Claimant, the existing permits issued by the Defendant would have served no purpose in progressing with the development.*

*30. Based primarily on the aforementioned reasons, the Defendant lawfully took the decision to officially revoke the permits to the Claimant to construct a pier and marina.”*

#### Public concern

117. With regards to the evidence of public concern in terms of support there is evidence of opposition from the people of West Landivar. There is also evidence from Mr. Gegg that after the public consultation, he employed Mr. Rayford Gordon to attend upon the residents of the West Landivar area of Belize City and explain the plans for his development in the area. Mr. Gordon was able to secure the signatures of some 92 residents signifying their agreement and support for the proposed development. See Exhibit “D.G.8” for a copy of the list of signatories. Overall there is evidence which

shows opposition and support for the project from the people of West Landivar.

118. In terms of the development, the evidence shows that the permit already granted was not the problem. This can be seen from Ms. Williams evidence at paragraph 28 above where she said that the Claimant had Marina and Pier permit strictly and solely for the initial development proposed, and not in respect of any modified design. Therefore, I find as a fact that the problem lies with the application for further permits from the Physical Planning Section to construct buildings over water, to construct a boat house, a fuel pump area and a restaurant. Further, the information received from the public hearing that the proposed development also included condominiums was never put to the Claimant. I find that the proposed developments was an irrelevant consideration for revocation of the permit. In my view, the Defendant had other options available such as refusal of the application for proposed developments.

#### Environmental Impact Assessment

119. The issue of conducting an Environmental Impact Assessment (EIA) for the further developments and getting an input from the public could have been done without cancellation of the permits already granted for the Marina and Pier. This is also an irrelevant consideration taken for cancellation of the permit which was for the initial development and not the proposed development.

### Non-payment of annual fee

120. With regards to the non-payment of annual fee for September, 2006 – September 2007, the evidence which is stated in the letter of revocation which is dated 8<sup>th</sup> August, 2007 and which the Claimant received on 27<sup>th</sup> August, 2007 shows that, “*annual payment for the period 9/2006 to 9/2007 is no longer required.*” I find as a fact that the Claimant was told not to pay this fee. Taking this into consideration for cancellation of the permit is therefore irrelevant.

### Trade Licence from Belize City Council

121. The evidence of the intention of the Belize City Council to refuse trade licence is hearsay. In any event, the granting of a trade licence by the Belize City Council is not one of the conditions for revocation of the permit. Further, the Claimant at paragraph 30 of his affidavit deposed that neither himself, nor Ian Morrison his project consultant had ever written to the Belize City Council applying for trade licenses for the project nor were any such licenses required. That his Companies with existing licenses would merely be relocated. I find that the granting of trade licence by the City Council was also an irrelevant consideration for the cancellation of the permit.

### Evidence on further developments

122. Mr. Gegg in his evidence at paragraph 29 said that if approvals for additional development could not have been had then the additional developments could not have been

pursued. In my view, Mr. Gegg could not legally proceed with additional developments without the necessary permits. Therefore, I agree with Mrs. Badillo that it was unreasonable to cancel the permits when the application was made to expand the project as there was already permission granted for the initial project.

123. Under the circumstances, it was unreasonable for the Defendant to revoke the permits granted to the Claimant to construct the pier and marina. I find that the Defendant's decision to cancel the Permits was unreasonable as the power to cancel Permits was not for any breach of the conditions of the permits granted.

**Improper motive**

124. The fourth ground is that the Respondent's decision to cancel the permits was motivated by inappropriate political consideration arising out of the very public nature of opposition voiced and widely publicized against the proposed marina and pier. Paragraph 27 to 32 of Mr. Gegg's first affidavit sets out the evidence of this improper motive. This ground overlaps with the ground of unreasonableness and that evidence applies here also. . The evidence of improper motive also includes evidence that the Perdoma family who lived in the area expressed opposition to the Marina Project. Also, that when Belize City Council held public consultations on the project that there were significant public opposition to the project as before the public consultations certain residents of the area canvassed the neighbourhood and secured significant opposition to the

project by misrepresenting the description of the project to the residents.

125. The evidence by the Defendants on the other hand is that because the marina project was evolving into a major project there would have been severe environmental consequences and there was need for an EIA to be done and for the people to voice their concerns. Ms. Banner submitted that the project was being expanded and that there was misrepresentation by Mr. Gegg with regards to those expansions. I find no evidence of misrepresentation by Mr. Gegg in this case. The evidence is that in February of 2007 the Claimant sought environmental clearance from the DOE for further amendments or developments to the specifications of the marina and an ECP First Amendment Agreement was entered into between the Claimant and the DOE.
126. In my considered view, Mr. Gegg could not legally expand his project without approvals. Further, there was nothing that prevented the DOE from conducting the EIA and holding public consultations. I agree with Mrs. Badillo that the revocation of the permits were caused by inappropriate political considerations. Also, that the opposition was not justified by the people as Mr. Gegg also had the support of the people.
127. I find that the Respondent's decision to cancel the permits for the marina and pier was motivated by inappropriate political consideration arising out of the public opposition

voiced by some people of West Landivar and which was widely publicized.

Parcel No. 3566 Declared a Public Reserve

128. The evidence at paragraph 36 and 37 of Mr. Gegg's first affidavit shows that Parcel No. 3566 was declared a public reserve. Mr. Gegg deposed that sections 6(1) and 6(3) of the National Lands Act do not empower the Defendant to declare land not being land owned by the Government a public reserve. This is a separate issue from the revocation of permits and will not be determined by this court in this action.

Remedy

129. Is this a case for the grant of certiorari? Ms. Banner submitted where remedy is futile order of certiorari will not be made. Learned Counsel's submission is that the intentions expressed by both the Department of Environment as well as the Belize City Council which must approve construction is that the extent and nature of the construction envisaged in the residential area must be reviewed. In my view, this argument which concerns for further developments is not a valid reason for canceling permits that were already granted for the construction of the Marina and Pier. Further, the decision to declare Parcel 3566/1 a public reserve does not prevent the Court from issuing an Order to quash a decision that was taken unlawfully.

130. How many permits were cancelled?

Ms. Banner submitted that only two permits were revoked by Physical Planning Unit, that is (1) E.P. 4/05/18 and (2) E.P. 04/05/23 as shown in the letter of revocation. Mrs. Badillo for the Claimant submitted that all permits were revoked and not only two. The letter from the Commissioner Lands and Surveys Department, Ministry of Natural Resources and the Environment canceling the permits states that the decision was taken to revoke all permits. However, it mentioned one permit number and it states that the Claimant must disregard letter requesting payment for Land Creation, Reclamation and the Utilization of the Reserve. This letter concerns the approval from the Minister of Natural Resources and the Environment for the Claimant to reclaim 12,000 sq. feet of land, create 21,000. sq. ft. of land and for usage of the 66' beach reserve in front of Parcel No. 3566. Exhibit "DG 4" shows not only the permit but approval to alter mangroves from the Forest Department, Environmental Clearance from the Department of Environment which was subject to the signing of an Environmental Compliance Plan, permit to construct the marina, approval to reclaim land, Approval of Amended Environmental Clearance which is subject to the signing of an Environmental Compliance Plan, a signed copy of an Environmental Compliance Plan, and approval for mangrove alteration. In my view, from a literal interpretation of the letter of 'cancellation of permits' dated 8<sup>th</sup> August, 2007, it was not only the permit dated 13<sup>th</sup> September, 2006 that was being cancelled but also all other approvals granted

whether it be for mangroves or reclamation of land or for Environmental Clearance. It relates to everything in respect to the construction of the Marina and Pier.

### Damages

131. Learned Counsel Ms. Banner submitted that damages have not been proved by the Claimant. Mrs. Badillo in reply submitted that damages have been incurred as the Claimant bought land, taken loan. The evidence at paragraph 17 of the Claimant's affidavit is that he has taken a loan of BZ\$1,400,000.00 from the Atlantic Bank to construct the marina. The loan has been partly utilized and attracts interest at the rate of 15 per cent per annum. The utilized portion of the loan amounts to BZ\$445,000.00. See Exhibit "D.G. 5" for a copy of the facility letter for the loan. I find that the Claimant has suffered damages as a result of the cancellation of the permit as he had utilized a portion of the loan which carries a 15 per cent interest.

132. **CONCLUSION**

- (1) I find that the Defendant's decision to cancel the permits was made in breach of the principles of natural justice.
- (2) I find that there has been a breach of the Claimant's legitimate expectation that his permits would have been cancelled in terms of their conditions.

(3) I find that the Defendant's decision to cancel the Permits was unreasonable as the power to cancel Permits was not for any breach of the conditions of the permits granted.

(4) I find that the Respondent's decision to cancel the permits for the marina and pier was motivated by inappropriate political consideration arising out of the public opposition voiced by some people of West Landivar and which was widely publicized.

In light of my findings, I order as follows:

ORDER

1. The Order is granted to quash the decision of the Minister to cancel the permits authorizing the construction of a marina and pier issued to the Claimant.
2. Damages to the Claimant to be assessed.
3. Cost for the Claimant to be agreed or taxed.

Minnet Hafiz

Supreme Court Judge

Dated this      day of September, 2008