REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SAN FERNANDO

Claim No. **CV2015-00232**

BETWEEN

ANNE BILLINGHURST,
WENDY WALLACE,
MINRUOTIE MAHARAJ,
SEMOON FRASER,
THE CHAGUANAS VENDORS ASSOCIATION

Claimant

AND

THE MAYOR, ALDERMEN, COUNCILLORS AND CITIZENS OF THE BOROUGH OF CHAGUANAS

Defendant

Before the Honourable Mr Justice Kevin Ramcharan

Date of Delivery: April 11, 2019

APPEARANCES:

Ms. Reka Ramjit for the Claimants

Mr. Kevin Ramkisson for the Defendant

REASONS FOR DECISION

1. Before the court is a claim brought by the Claimants on their behalf and on behalf of the members of the Chaguanas Vendors Association (CVA). The Association formed in 2001

comprises persons who vend within the Borough of Chaguanas. Until 2010 this vending took place on the streets of the Borough. Since late 2010 they have occupied premises in the Borough which formally comprise the Chaguanas Health Centre (CHC).

2. The Defendant is established under Section 4 and second schedule in the Municipal Corporation Act as the body corporates responsible in general for the administration of the area within this bounds.

3. In issue, is the decision by the Corporation communicated by it to the members of the CVA to remove them from the property of the Health Centre to the old Globe cinema by notices dated the 7th of January, 2015.

4. In their evidence the Claimants claim that in 2009, they spoke as a group to their then MP Mr. Jack Warner about the issues they are facing while vending in the streets. He promised them that when he got into office he would assist them in getting a location where they could vend. When the People's Partnership Government came into office in 2010, they again return to him and he promised to assist them. By November that year they were provided with a premises in which they are located currently. They alleged that Mr. Warner promised them that a six (6) storey mall would be built for them on the premises. They further alleged that they heard the then major of the Defendant Mr. Olando Nagasar say to other persons on various occasions that the site would be where the borough would build a mall for the vendors in Chaguanas.

5. They further claim that based on these representations many vendors spend significant sums on their booths. They alleged that they were invited to meeting in September 2014 where to their surprise they were advised that they would have to leave the site and relocate to the old Globe cinema. They alleged that they voiced opposition to this move because of the representation made to them. They then received notices dated 7th January, 2015 on the 8th of January, 2015.

6. Mr. Warner sworn an affidavit on the Claimants behalf. He alleges that approached Cabinet after the request made by the Claimants and they approved his request to use the Chaguanas Health Centre as the site for the vendors, he allege that as a result of this an application was made to the Town and Country Planning Division for approval for the building. He alleges that both he and the then Mayor gave assurances to the vendors that a permanent site would be built for them.

7. For the Defendants Olando Nagasar, the former Mayor and Gopaul Boodram, the current Mayor gave evidences on its behalf. They both denied that the Claimants were given any assurances that the site would be use for permanent structure. They allege that the site is required as part of spatial development plan for the area as a green space. The Defendant further claims that the site was never intended as a permanent site for the use of the Claimants but it was always intended to use temporarily. The alleged that consultations were had with the vendors about the move to the old Globe cinema. They

both denied that the Chaguanas Borough Corporation had sent any application for planning permission to the Town and Country Planning Division to build the mall at the CHC site.

8. Permission was granted to cross examine the deponents on their affidavits in this matter but when it came up for hearing the Claimants indicated that they would not be cross-examining the Defendants witnesses. The result of this is that I accept their evidence and prefer it where it conflicts with the evidence to the Claimants.

9. Further, Kamal Maharaj an officer of the Town and Country Planning Division sworn an affidavit in this matter on behalf of the Claimants and he was part of the order for cross examination. However, the Claimants did not produce him for cross examination. In those circumstances, I disregard completely the contents of his affidavit though I do not draw any adverse inferences against the Claimants.

10. It is necessary at this time to go through the procedural history of this matter from November 2018 to present. On the 14th November, 2018, matter came up for trial in San Fernando. On application by the Claimants, the hearing date was vacated because Counsel for the then Counsel to the Claimants had returned his brief. Directions were then given as follows:

    a. The cross examination was adjourn to the 22nd and 23rd of January.

    b. Written submissions were to be filed and served on or before the 11th of March.

c. Oral submission for the 2nd of April.

11. At the hearing on the 22nd January, it was disclosed by the Claimants then, that they had no longer intended to cross examine either of the Defendants witnesses nor produce Kamal Maharaj for cross examination. In those circumstances, it was suggested by Attorney for the Defendant that oral submissions could be entertained on the 23rd of January. No doubt, the direction for the filing of written submissions in March which had been given in November had slipped the mind of Attorney-at-Law for the Defendant, as it was not drawn to the attention of the court. The Attorney at Law, for the Claimants did not make mention of the directions either. That direction not being in the Court's mind, the suggestion was acceded to.

12. On the morning of the 23rd of January, an email was sent by the Claimants Attorneys-at-Law to the Judicial Support Officer indicating that they could not attend the hearing and asked for permission to file written submission by a date in March. No reference was made in that email to the directions made in November 2018. Additionally, when the matter came up for hearing the Attorney-at-Law for the Claimant did not see it fit to attend court to pursue their application or to send someone on their behalf to pursue the application to file written submissions. This, in spite of the fact that Attorney-at-Law for the Defendant by return email saying that he strongly objected to the Claimants being allowed to make written submissions while he made oral submissions.

13. I will say now had the Claimants attorney attended court on the 23rd January 2019 I would have given directions for the filing of written submissions, despite the fact that at that time the directions of November 2018 were not at the front of my mind. Be that as it may, what happened thereafter is that the Claimants filed written submissions on the 12th March 2019, interestingly one day after the date appointed in the directions given in November 2018 for the filing of the submissions. No reference to the court's directions was made in the submissions. The Defendant filed a response on the 26th March 2019. In his submissions in response Counsel for the Defendant urged the court not to consider the submissions of the Claimants in light of their refusing to attend on the 23rd of January, as well as, his objection in his email on the 22nd of January. However, in light of the directions given on the 11th and the 14th of November, I do not think it would be right for the court to have disregarded those submissions and so I did pay regards to those submissions in coming to this decision.

14. Having said that the law of legitimate expectation is well settled in this jurisdiction and the parties in general agreed to the broad outline of the principles. Those principles can be found most recently outlined in the judgement of the Privy Council in the case of ***United Policy Holders Group vs The Attorney General***[1]. In that case the board said at paragraph 37 in that judgement: ***"In the broadest terms the principle of legitimate expectations is based on the proposition that where a body states that it would do or not do something, persons who has reasonably rely on a statement should in the***

[1] **[2016] UKPC 17**

absence of good reason been entitle to rely on the statement and enforce it through the courts."

15. Some points are clear. Firstly, in order to found a claim based on the principle of legitimate expectation, the statement or representation in question must be clear and unambiguous and devoid of relevant qualifications. The law is also clear that legitimate expectation can be overturned in cases of overriding public interest. What an authority needs to consider if it wants to overturn a legitimate expectation in those circumstances considered by the Privy Council decision of Pamponette vs The Attorney General of Trinidad and Tobago at paragraph 34, where the court quoted the well-known case of ***R vs North and East Devon Health Attorney ex parte Coughlan***[2].

"The more difficult question is whether the Government is entitled to frustrate the legitimate expectation that had been created by its representations. In recent years there has been considerable case law in England and Whales in relation to the circumstances in which a public body is entitled prostrate a substantive legitimate expectation".

16. Then the court goes on to quote ***Coughlan***: ***"where a court considers that a lawful promise or practice has induced the legitimate expectation of a benefit which is substantive not simply procedural, authority now establishes that hereto the court with***

[2] **[2001] Q.B. 213**

a proper case decide whether frustrate the expectation is so unfair to take a new and different course to amount adduce of power. Here once is a legitimacy of the expectation is established the court would have the task of going the requirement of fairness against any overriding interest relied upon the change of policy". And at paragraph 36 it states: ***"the board agrees, where an authority in considering whether to act inconsistently with a representation of promise which has made and which is given rise to a legitimate expectation, good administration as well as elementary fairness demands that it takes into account the fact that the proposed act would amount to a breach of the promise put in public law terms the promise and the fact of the proposed act would amount to a breach of it a relevant factors which must be taken in account***".

17. In his submissions Counsel for the Defendant also submitted that whilst consultation in of itself is not mandatory, once it is undertaken, it must be undertaken fairly and in those terms he meant it must be taken at the formative stages before the decision is made. He submitted that that is e quoted in support of that proposition, the decision of Seepersad, J in ***Trinidad and Tobago Automotive Dealers Association v the Minister of Trade Industry and Investment***[3], from paragraphs 14 through 19.

18. Assuming for the moment that the claimants can establish that there was a legitimate expectation, I am of the view that in the circumstances, there would have been no proper basis for the Defendant to overturn it.

[3] **Cv2014-01301**

19. There was no compelling evidence presented which respect to the overriding public interest which would justify the resiling from that position. While it is accepted that green area spaces are a necessary part of communities, there was no evidence to suggest that the lands of the CHC was the only area where this green space could be accommodated. There was no evidence that the assurances allegedly given to the Claimants were considered at all when coming to the decision to resile from the representations made. Furthermore, the proposed relocation was to be a temporary one. The evidence reveals that the lease approved by Cabinet was an eighteen (18) months lease of the old Globe cinema from June, 2014. So that, if the claimants' evidence is to be believed that is to say they were promised that a 6 storey building would be built at the CHC facility for them to use permanently, then they were being moved from a permanent site to a temporary one.

20. Further I hold that the consultation were not adequate as Mr. Nagasar in his affidavit states at paragraph 65 '**at the consultation the vendors were informed of the decision** made'. This is consistent with the Cabinet notes of May 2014 and July 2014 which speak to a decision to lease the old Globe cinema, so it could not be said that the consultations took place during a formative stage of the policy.

21. Further, in its submissions the Defendant claim that Chaguanas Borough Corporation was the authoritative body and therefore Cabinet could not direct it. All this is in direct

contrast to the letter from the Permanent Secretary to the Chaguanas Borough Corporation which is exhibited as ON17 to the affidavit of Orlando Nagessar, the background to this was that a note was sent to Council advising them of the decision of Cabinet to lease the Old Globe Cinema and the matter was raised at a Statutory meeting of the Corporation. However, members had walked out, meaning that there was no quorum. That information had been sent to the Permanent Secretary who responded as follows ON18 and ON17:

> ***"Reference is made to your letter dated 29th December, 2014 wherein you sought the advised of the Ministry regarding the captioned matter.***
>
> ***Please be advised that the Cabinet Minute #1368 of May 15, 2014. Cabinet agreed to lease rental of a parcel of land formally housing the old Globe cinema as an alternative interim site to vacate the Chaguanas Street Vendors.***
>
> ***<u>Please be further advised that the decisions taken by Cabinet in accordance with the executive power conferred on it by the constitution of the Republic of Trinidad and Tobago Chapter 5.</u>***
>
> ***Having regard to Cabinet's decision I hereby instruct you to carry out Cabinet decision as contained in Cabinet Minute No. 1368 of May 15, 2014."*** (emphasis supplied)

22. The upshot of that is that the Permanent Secretary was advising that Cabinet could have indeed have directed the Defendant with respect to national policy. Certainly in my view, this is consistent with the power given to Cabinet under the Constitution and which has not been delegated by Cabinet, or Parliament to the Corporation.

23. So I now turn to the question of whether there was in fact a legitimate expectation on the part of the Claimants that they would have permanent use of the old CHC facility. The Defendant contended that Mr. Warner could not have given Cabinet as he was not either line minister and he was just a single member of Cabinet.

24. I agree with that broad proposition as laid out by the Defendant that a singular member of Cabinet could not have bound Cabinet, but with this caveat. Mr. Warner could have communicated to the Claimants a decision actually made by Cabinet. In fact this is the evidence of Mr. Warner that he was in fact communicating a decision of Cabinet.

25. However, having considered the relevant documents in this case, I have come to the view that on a balance of probability, there was no such decision of Cabinet as the contemporaneous evidence does not support the fact of this decision made.

26. Firstly, the Cabinet note does not speak of any particular use of the Chaguanas Health Centre lands whether permanently or temporarily in favour of the Claimants or for any other purpose and secondly, the sign on the premises which was there at the launch of

the market said "Temporary Site for Vendors". I therefore do not accept that Mr Warner's recollection of the events as they relate to the decision made by Cabinet was accurate.

27. Mr. Warner in cross examination said that when the permanent structure would have been build, the sign would have been changed, I do not accept that evidence as being likely. I also accept Mr. Nagasar's evidence that he did not make any such assurance nor did he hear Mr. Warner make any such assurance. Of course, that does not mean that Mr. Warner did not make an assurance, just that Mr. Nagasar did not hear him say it.

28. With respect to the alleged detriment which some of the vendors suffered as they have built semi-permanent structures on the premises, there are two points to note. Firstly, the licence under which the vendors took possession of the premises expressly proscribed any alterations to the booths being made, so that the construction done would be in violation of the licence, and therefore could not be relied on by the Claimants. Secondly, if the Claimants' case is to be accepted, these alterations would have had to have been demolished in any event to make way for the new structure when it was being built. In the circumstances, this purported detriment cannot be relied on by the Claimants in any way.

29. Having held that it was not a decision of Cabinet, Mr. Warner could not make an assurance on his own either as MP or in his portfolio as Minister of Works and Transport. In the

circumstances, there was no legitimate expectation that the Claimants could have drawn from any utterances by Mr. Warner.

30. The claim must therefore be dismissed with costs to be assessed by a Registrar if not agreed.

31. As a consequence of this decision, the injunction granted in favour of the Claimants in January 2015 is automatically discharged. The result of this would be that the Corporation could immediately take steps to have the vendors removed from the site. It would be unfortunate if this sort of action would be taken, however, it is understandable that the Defendant cannot give an undertaking not to remove the Vendors until they have found them an alternative location without having discussed it at the Council level. In those circumstances there will be stay of execution of 120 days from today's date to allow alternative accommodation for the Claimants to be made.

Kevin Ramcharan

Judge