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GRAND COURT CIVIL DIVISION CAYMAN ISLANDS

\ND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: G of 2025

BETWEEN:

CHRISTOPHER D. JOHNSON
and SHIREOAK LIMITED

Applicants

AND

THE GOVERNOR
OF THE CAYMAN ISLANDS

First Respondent

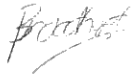
ATTORNEY GENERAL OF THE CAYMAN ISLANDS
as the representative of the CAYMAN ISLANDS GOVERNMENT

Second Respondent

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of Applicants	Christopher D. Johnson & Shireoak Limited c/- Broadhurst LLC, Level 4, 54 Edward Street, George Town, Cayman Islands

Judgment, order, decision or other proceeding in respect of which relief is sought:	The First Respondent's decision (acting on the advice of the Governor in Council (i.e. Cabinet)): 1) To issue Notice(s) of Intended Acquisition of the Applicants' adjoining parcels of land dated 4 February 2025 (the "**Decision**").
Relief sought:	1) Leave to apply for judicial review and a direction under Order 53, rule 3(10) of the Grand Court Rules that the grant of leave shall operate as a stay of the Decision under challenge pending the final determination of the application for judicial review; <u>OR</u> 2) Directions for the listing of the application for leave to apply for judicial review and a stay of the decision under challenge pending the final determination of the application for leave to apply for judicial review. <u>Following the determination of the substantive claim:</u> 1) Declaration that the Decision was unlawful for the reasons set out in the grounds for judicial review. 2) An order quashing the decision under challenge (certiorari).

	3) Such further relief as may be needed to give effect to the Court's judgment. 4) Costs.
Name and address of Applicants' attorney	Broadhurst LLC Level 4, 54 Edward Street, George Town, Cayman Islands PO Box 2503 Att: Richard Parrish (richard@broadhurstllc.com)
Signed 	**Dated** 15 March 2025

GROUNDS ON WHICH RELIEF IS SOUGHT

A. INTRODUCTION

1. For the reasons set out below, the Applicants seek an order providing for either:

    a) a grant of leave to apply for judicial review and a direction that the grant of leave shall operate as a stay of implementing the Decision, namely by staying any further action of the Governor to acquire the Land (as defined), including but not limited to, the issuance of an order under section 8 of the Land Acquisition Act (1995 Revision) (the "**Act**");

    b) alternatively, an order that the implementation of the Decision, including but not limited to, the issuance of an order by the Governor under section 8 of the Act be stayed pending further order or the final determination of the application for leave to apply for judicial review.

2. The Applicants are the owners of adjoining parcels of land in George Town, more commonly known as 'Red Spot Beach'. More specifically:

    a) Mr Chris Johnson is the owner of Block OPY, Parcel 5;

b) Shireoak Ltd[1] is the owner of Block OP6, Parcel 7;

(collectively the "**Land**").

3. The First Respondent (the "**Governor**") is the Governor of the Cayman Islands appointed under section 29 of the Constitution and acting upon the advice of the Governor in Council.

4. The Second Respondent is the Attorney General of the Cayman Islands acting in its capacity as the legal representative of the Cayman Islands Government ("**Government**"), including but not limited to, the Governor and Cabinet (Governor in Council).

5. The background facts and history of the Government's efforts to acquire the Land are set out in detail in the First Affidavit of Christopher D. Johnson dated 15 March 2025 and filed in support of the Application ("**Johnson 1**").

6. On 4 February 2025, each of the Applicants were served with a 'Notice of Declaration of Intended Acquisition' issued on behalf of the Governor in respect of their respective parcels (the Land) and which had been issued pursuant to section 6 of the Act (collectively the "**Notices**"). The Notices both stipulated in respect of the Land that:

> *"....the Cayman Islands Government intends to acquire the above property in accordance with the Land Acquisition Act (1995 Revision) for the purpose of ensuring ownership of the property by the Crown for the future benefit of the people of the Cayman Islands and the local fishermen for the continued use as a public fish market."*

7. On 26 February 2025, the Applicants' counsel ("**Broadhurst**") wrote to the Respondent confirming the intention of the Applicants to seek leave to apply for judicial review of the Decision should the Respondent not confirm within 7 days that the Governor would withdraw from the acquisition of the Land pursuant to section 35(1) of the Act ("**Pre-Action Letter**").[2]

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[1] Mr Chris Johnson is the sole shareholder and director of Shireoak Limited.
[2] While the Applicants accept that the usual response time is 14 days, in circumstances where the Applicants considered that they were required to bring any application for leave prior to 16 March 2025, a shorter response time was requested of the Respondent.

8. The Pre-Action Letter also requested (should the Governor not be prepared to withdraw from the acquisition of the Land) that the Respondent furnish the Applicants with the following information:

    a) the date the Decision was made;

    b) the identity of the members of Cabinet who made the Decision;

    c) all written communications (including email communications) of any member or employee of the Government had had with any of the individuals who are currently operating from the Land (or internally concerning the Land);

    d) all opinions, advice or recommendations prepared for consultation by Cabinet in coming to the Decision;

    e) record of deliberations of Cabinet at the meeting in which the Decision was made, including, the minutes of that meeting;

    f) the reasons for the Decision (to which the Applicants are entitled under section 19(2) of the Cayman Islands Constitution);

    (the "**Pertinent Information**").

9. In making the request for the Pertinent Information, the Applicants relied upon the Government's duty of candour to assist the Court with full and accurate explanations of all facts relevant to the issue that the Court must decide, as well as the Government's general duty to give reasons for the Decision.

10. On 26 February 2025, the Applicants received certain without prejudice offers from the Government in respect of the Land (collectively the "**Final Offers**"). Both Final Offers stipulated that should they not be accepted by 10 March 2025, the Government would proceed in seeking an order for the compulsory acquisition of the Land, pursuant to section 8 of the Act.

11. On 3 March 2025, the Respondent wrote to Broadhurst in confirming that it would require further time to provide its response to the Pre-Action Letter, confirming that said response would be provided within 14 days (12 March).

12. As at the date of this Application, there has been no response from the Respondent.

13. Pursuant to section 19(1) of the Cayman Islands Constitution Order 2009 ("**Constitution**"), all decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair. In that regard, the proposed claim for judicial review concerns the lawfulness, rationality and procedural fairness of the Decision. In summary, there are three grounds of claim:

    a) **Ground 1 – The Decision is unlawful** – Pursuant to section 6(1) of the Act, private land may only be compulsorily acquired by the Government if the land in question is needed for a public purpose. While the term "public purpose" is not defined in the Act and has traditionally been given a wide definition by the courts, it should be self-evident that such "public purpose" does not extend to protecting private commercial interests (i.e. the continued use of the Land by a small group of individuals to operate a fish market (to the exclusion of the general public));

    b) **Ground 2 – The Decision is irrational**– Given the fact that the Applicants have proposed to gift the Land to the people of the Cayman Islands by way of placing it into an irrevocable trust, the Decision lacks rationality, if indeed the purpose for the acquisition is to ensure the Land is maintained for the future benefit of the people of the Cayman Islands in perpetuity (to the exclusion of individual and/or commercial interests).[3] The irrationality of the Decision is further evidenced when one considers that the Applicants had previously offered the Government the use of a nearby parcel of land (with better amenities) for use as the fish market; and

[3] The Applicants reserve their rights to seek to supplement or amend this ground of review in light of the disclosure to be made in this action.

c) **Ground 3 – The Decision lacks procedural fairness as a result of the Government's failure to give proper reasons and/or to allow the Applicants to be heard** – Pursuant to section 19(2) of the Constitution, every person whose interests have been affected by a decision or act of a public official has the right to request and be given written reasons for that decision or act. The principles of natural justice also dictate that such persons be allowed to be heard on any decision affecting their rights. As at the date of this Application, the Respondents have failed to disclose either detailed reasons for the acquisition, or the Pertinent Information as requested in the Pre-Action Letter. Accordingly, the Applicants puts the Respondents to proof of the reasons for the Decision and reserve their rights to seek to supplement or amend this ground of review in light of the disclosure to be made in this action.

14. In the premises, the primary relief sought is for the Decision to be declared unlawful, irrational and/or procedurally unfair for the reasons set out above (and in greater detail below) and that it be quashed (certiorari).

B. THE THRESHOLD FOR LEAVE

15. The Court should grant leave where: *"on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case" (R v Inland Revenue Commissioners, ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, 644A, *per* Lord Diplock).

16. The requirement for leave "*is no more than a filter to weed out groundless cases*" (*Knibbs v Revenue and Customs Commissioners* [2020] 1 WLR 731, para.25), designed "*to protect public bodies against weak and vexatious claims*" (*R v Secretary of State for Trade & Industry ex p Eastaway* [2000] 1 WLR 2222, 2227H, *per* Lord Bingham).

17. As the Privy Council has noted: "*A refusal to grant leave to apply for judicial review is a final and terminating decision which precludes a party from having the merits of his case considered at a substantive hearing. The power to terminate proceedings without any hearing on the merits is one which should be exercised with considerable caution and in a*

proportionate way" (*Peerless Limited v Gambling Regulatory Authority* [2015] UKPC 29, para.24).

18. For the reasons set out below, the Applicants submit that their case plainly surmounts the threshold for leave to apply for judicial review.

C. INTERIM RELIEF

19. The current deadline for the Applicants to accept the Final Offers has now passed, and as such, the Applicants understand that it is the Governor's intention to proceed with compulsory acquisition of the Land.

20. While the Applicants acknowledge that the Land is vacant and that the prejudice likely to be suffered by the Applicants is minimal should the acquisition be permitted to proceed prior to the Applicants' application for leave for judicial review being heard, it should also be acknowledged that without a stay, the disputed process (i.e. the compulsory acquisition) will conclude.

21. Rule 3(10) of the Grand Court Rules provides:

> "*Where leave to apply for judicial review is granted, then –*
>
> 1. *(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;*
>
> 2. *(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ*".

22. Although rule 3(10)(a) refers to a "*stay of proceedings*", the Court of Appeal of England and Wales held (in relation to rule 3(10)(a) of Order 53 of the Rules of the Supreme Court, which the Grand Court Rules replicate) that "*proceedings*" refers to any decision taken by public authorities and the process by which such decisions are reached (*R v Secretary of State for Education and Science, ex p Avon County Council* [1991] 1 QB 558). Accordingly,

the Court may exercise its rule 3(10)(a) power to direct that the grant of leave in this case shall operate as a stay of the compulsory acquisition process as outlined under the Act.[4]

23. If the Court is unable to determine the application for leave on an urgent basis, then it can grant an equivalent interim stay in accordance with the *American Cyanamid* principles: preserving the *status quo* until the Court is able to consider the matter more fully. As Lord Hoffmann held in *National Commercial Bank of Jamaica Ltd v Olint Corp Ltd* [2009] 1 WLR 1405, para 16 (explaining *American Cyanamid Co v Ethicon Ltd* [1975] AC 396), the objective "*is to improve the chances of the court being able to do justice after a determination of the merits at trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result*"; "*The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other*", that is, to "hold the ring" until the application can be considered further.

D. LEGAL FRAMEWORK

Land Acquisition Act (1995 Revision)

24. The relevant provisions of the Act are as follows:

> ***Declaration of intended acquisition***
>
> *6. (1) Whenever it appears to the Governor that any particular land is needed for a public purpose, a declaration to that effect shall be gazetted.*
>
> *(2) The declaration shall state the district in which the land is situated, the purpose for which it is needed, its approximate area and, where a plan has been made of the land, the place where such plan can be inspected.*
>
> *(3) No declaration shall be made under this section in regard to any land save in cases where the compensation for the acquisition of the land is to be paid wholly or in part out of-*
>
> > *(a) the revenues or funds of the United Kingdom Government; or*
> > *(b) the public revenues or loan funds of the Islands.*

[4] See sections 8, 9 of the Act.

(4) A declaration under this section shall be conclusive evidence that the land to which it relates is required for a public purpose.

Negotiations for purchase

7. (1) Whenever a declaration has been made under section 6 the Governor shall, without delay, enter into negotiations for the purchase of the land to which the declaration relates upon reasonable terms (which shall include early possession).

(2) It shall not be necessary for the Governor to await the publication of the declaration before he endeavours to conclude an agreement under this section.

(3) Nothing in this section shall be construed as prohibiting or delaying the procedure hereinafter provided for the compulsory acquisition of any land.

Power of Governor to direct compulsory acquisition

8. Where a declaration has been made and published as required by section 6, and where in respect of the land to which the declaration relates the Governor is satisfied that-

(a) it has not been possible to conclude a satisfactory agreement under section 7;

(b) the negotiations in connection with any such agreement have been or are being unduly delayed; or

(c) it is not in the public interest to enter into such negotiations,

the Governor may, by order under his hand, proceed to acquire and to enter upon and take possession of the land compulsorily in accordance with this Law.

Marking out, etc., and notice of intention to take possession

9. (1) In every case where, under section 8, he acquires any land compulsorily, the Governor shall, without delay, cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured and (if no plan has been made thereof) a plan to be made of the same.

(2) The Governor shall then cause public notice to be given at convenient places on or near the land to be taken, stating the intention of the Government to take possession of the land and that claims to compensation for all interests in such land may be made to the magistrate.

E. GROUNDS FOR JUDICIAL REVIEW

Ground 1 – The Decision is unlawful

25. Pursuant to section 6(1) of the Act, land may only be compulsorily acquired if the Governor determines that the land is needed for a public purpose. Per the Notices, the Governor has stated that the Land is required for:

> *"…. the purpose of ensuring ownership of the property by the Crown for the future benefit of the people of the Cayman Islands and the local fishermen for the continued use as a public fish market."*

26. With respect to establishing the illegality of a decision subject to judicial review, a claim of illegality will be upheld where it can be shown that the decision-maker has exercised its power for an improper purpose.[5] In other words, if it is shown that the Governor has exercised her powers under the Act to compulsorily acquire land which is in fact not needed for a public purpose, but rather some other purpose, then such a decision should be considered unlawful.

27. As set out in detail in Johnson 1 filed in support of the Application, it is evident from the history of the Government's efforts to acquire the Land, as well as the historical and (more recent) comments of various members of the Government, that the only reason (or purpose) that the Government seeks to acquire the Land is to ensure that the Fishmongers may remain in place. Indeed, this is one of the stated purposes set out in the Notices.

28. While the Applicants acknowledge that the term "public purpose" is not defined in the Act and has traditionally been given a wide definition by the courts, it should be self-evident that such purpose does not extend to protecting private commercial interests (i.e. the use of the Land for certain individuals to operate a fish market to the exclusion of the public). The reliance by the Governor on such reasoning is even more egregious in circumstances where a compulsory purchase order should only be made where there is a compelling case in the

[5] See *Porter v Magill* [2002] 2 AC 357.

public interest, and where the acquiring authority has ensured that the purposes of the order sufficiently justify interfering with the human rights of those with an interest in the land.[6]

29. Accordingly, where the Governor has exercised her power under the Act for an improper purpose, namely by seeking to acquire land for reasons seemingly unrelated to any public benefit, a reasonable doubt is established as to whether the acquisition has been made for a proper purpose, and accordingly, it is submitted that the law requires that a balanced decision be made against the compulsory acquisition. As set out *In Prest v Secretary of State for Wales*[7]:

> *"…. To what extent is the Secretary of State entitled to use compulsory powers to acquire the land of a private individual? It is clear that no Minister or public authority can acquire land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when it is necessary in the public interest. In any case, therefore, where the scales are evenly balanced – for or against compulsory acquisition – the decision – by whomsoever it is made – should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressively authorised by Parliament and the public interest decisively so demands …. If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen* (emphasis added)."

30. In the premises, the Applicants submit that the Decision should be determined unlawful on the basis that the Governor has exercised her power of acquisition under the Act for an unlawful purpose, that being to favour certain private commercial interests in order that they remain on the Land (as opposed in acquiring the Land as a result of any public need).

Ground 2 – The Decision is irrational

31. The classical formulation of an irrational decision is one that *"is so unreasonable that no reasonable authority could ever have come to it"*, which this Court would recognise as

[6] See *R. (on the application of Hall) v First Secretary of State* [2007] EWCA Civ 612
[7] [1982] 266 eg 527

'Wednesbury Unreasonableness'[8]. In assessing the reasonableness of a decision, the courts may also consider whether a decision is proportionate to the aim that it is seeking to achieve. A decision that fails to balance relevant considerations, or that is particularly onerous or oppressive, may be considered irrational and unreasonable.

32. As set out above, it is claimed in the Notices that the Land is required for two reasons:

    a) the first reason is said to be that the Land is required for the purpose of ensuring ownership of the Land by the Crown for the future benefit of the people of the Cayman Islands; and

    b) the second reason is said to be that the Land is required for the local fisherman for the continued use as a public fish market.

33. Upon a detailed analysis, the above reasons are incapable of objective justification and are irrational, in creating a result that is both onerous and oppressive, namely by depriving the Applicants of their private property. More specifically:

    a) With respect to the first reason provided, the Governor ignores that fact that the Applicants have proposed to gift the Land to the people of the Cayman Islands by way of placing it into an irrevocable trust and without any compensation. The only caveat imposed by the Applicants is that the Land is not used for any commercial activity. Put simply, if the purpose of the Decision is to acquire the land for the future benefit of the people of the Cayman Islands (which by definition must be to the exclusion of any individual interests), the irrationality of the Decision is laid bare. In other words, one must ask the question as to why the Governor would choose to use public funds to acquire the Land, the benefit of which the Government can (in effect) obtain for free in perpetuity, without utilising public funds; and

    b) With respect to the second reason provided, while the Applicants maintain their position that such a purpose renders the Notices unlawful under the Act, the

[8] See *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] EWCA Civ 1 at paragraph 230 ("***Wednesbury***").

Governor has failed to take into consideration the fact that the Applicants have previously offered the Government the use of a nearby parcel of land (with better amenities) for use as the fish market. In addition, the Government owns certain parcels of land nearby which it will be demonstrated are more suitable for use as a fish market (and the Applicants understand were purchased for this exact purpose). In this respect, the Applicants reserve their rights to seek to supplement or amend this ground of review in light of the disclosure to be made in this action.

Ground 3 – The Decision suffers from procedural unfairness (failure to provide reasons and/or failing to allow the Applicants to be heard)

34. While it is accepted that the Governor was not subject to a duty under the Act to consult with the Applicants in respect of her decision to acquire the Land (other than in negotiating compensation), she was required to adhere to the principles of natural justice when making the Decision, namely by way of providing detailed reasons as to the need for the Government to acquire the Land.

35. In addition, the principles of natural justice demand that the Applicants be entitled to be heard on any matter affecting their rights, including but not limited to their property rights[9], which this Court has held is satisfied by a party's right to seek a judicial review of any such decision in order to determine the legality of such action.[10] Respectfully, it is submitted that this alone should constitute a sufficient basis to grant the Applicants leave in order that they may be heard in respect of the Decision which purports to divest them of their property.

36. Further, as at the date of this Application, the Respondent has failed to disclose the Pertinent Information as requested in the Pre-Action Letter (which would allow for the Applicants to more succinctly plead their grounds of review) or provide detailed reasons as the need to acquire the Land. In the premises, the Applicants puts the Respondent to proof of the reasons for the Decision and reserve their rights to seek to supplement or amend this ground of review inf light of the disclosure in this action.

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[9] See section 15(1) of the Bill of Rights, Freedoms and Responsibilities contained in Part 1 of Schedule 1 of the Constitution.

[10] See *Crosby Collymore Ebanks & Ors v Governor of Cayman Islands & Ors* CICA No. 30 of 2021, on appeal from *Crosby Collymore Ebanks & Ors v Governor of Cayman Islands & Ors* (Unreported, G163 of 2019).

F. RELIEF

37. The application for an interim stay is set out at section C above. In respect of final relief, the Applicants will seek:

    a) declarations that the Decision was unlawful, irrational and/or procedurally unfair for the reasons set out in the grounds for judicial review at section G above;

    b) an order quashing the Decision under challenge (certiorari);

    c) such further relief as may be needed to give effect to the Court's judgment; and

    d) costs.

G. CONCLUSION

38. For the reasons set out above, the Applicant seeks:

    a) The grant of leave to apply for judicial review; and

    b) An interim stay of the compulsory acquisition process under the Act.

39. A draft order is attached.

Dated this 15th day of March 2025

Broadhurst LLC,
Attorneys for the Applicants

TO: The Clerk of the Court

TIME ESTIMATE: The estimated length of the hearing of this summons is 1 hour.

This Application was issued by Broadhurst LLC, Attorneys for the Applicants, whose address for service is 4th Floor, Monaco House, 54 Edward Street, George Town, KY1-1104, Cayman Islands

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GRAND COURT CIVIL DIVISION CAYMAN ISLANDS

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: G0076 of 2025

BETWEEN:

CHRISTOPHER D. JOHNSON
and SHIREOAK LIMITED

Applicants

AND

THE GOVERNOR
OF THE CAYMAN ISLANDS

First Respondent

ATTORNEY GENERAL OF THE CAYMAN ISLANDS
as the representative of the CAYMAN ISLANDS GOVERNMENT

Second Respondent

NOTICE OF MOTION

TAKE NOTICE that pursuant to leave of the Honourable Madam Justice Carter, given by minute of order dated 11 April 2025, the Court at the Law Courts, George Town, Grand Cayman will be moved on the 26th day of June 2025 at 10 am or as soon thereafter as counsel can be heard, by counsel on behalf of the Applicant for an order for directions ahead of the substantive hearing for an order for the relief in the terms, and on the grounds as set out in the Form 53 Application previously served in this action.

AND for an order that the costs of and incidental to this notice may be paid by the Respondents.

AND such further orders or relief as this Honourable Court deems fit.

Dated this 24th day of April 2025
Filed this 24th day of April 2025

Broadhurst

Broadhurst LLC
Attorneys for the Applicants

The time estimate for this notice is 30 minutes.

To: The Clerk of the Court

And to: Attorney-General's Chambers

THIS NOTICE OF MOTION is filed by Broadhurst LLC, Attorneys for the Applicants whose address for service is Level 4, 54 Edward Street, George Town, Grand Cayman, Cayman Islands KY1-1104