

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **NEVHCV2018/0054**

Between

Zephaniah Liburd

Claimant

-and-

**Nevis Housing and Land Development Corporation
The Minister of Agriculture and Lands**

Defendants

Before: His Lordship Justice Ermin Moise

Appearances:

Mrs. Angela Cozier of counsel for the claimant

Mr. Terence Byron of counsel for the Defendants

2021: July, 22nd
November, 8th

JUDGEMENT

[1] **Moise, J:** This is a claim for judicial review. By way of Fixed Date Claim filed on 13th February, 2019, Mr. Zephaniah Liburd sought an order of certiorari, quashing the decision of the National Housing and Land Development Corporation (NHLDC), to grant a lease of a parcel of land to a third party developer. Mr. Liburd also sought an order for an injunction, restraining the NHLDC and the Minister of Agriculture and Lands from continuing to enter the property in question on account of an equitable interest which he claims to have had. In addition, Mr. Liburd sought orders of mandamus, exemplary and aggravated damages, interest and costs. Having reviewed the evidence and examined the submissions filed by counsel for all parties, I have determined that the claim should be dismissed with no order as to costs. These are the reasons for my decision.

The Facts

- [2] In 1981, Mr. Liburd began occupation of a parcel of land registered in Boock 5 Folio 43 of the Register of Titles for the Nevis Circuit. The lands were in fact crown lands located in the general area of Cade's Bay in Nevis. In 1982 Mr. Liburd's status as a lessee of the property was formalized in a 35 year lease executed between himself and then Governor Sir Clement Arrindell. Although the lease was executed in 1982, it was acknowledged that the 35 year period would have commenced from the date of Mr. Liburd's occupation in 1981. The lease agreement expressly stated that the property was to be used for the purpose of operating a boat yard and more specifically for boat building and docking purposes. It also dictated that no permanent structures were to be built without written permission from the government.
- [3] Over the years, Mr. Liburd constructed more than just a boat yard on the property. He built a beach bar, a restaurant, bathroom facilities and 3 villas. It appears from the evidence presented at the trial that the area had grown over the years to become a regular spot for socialization. Even Minister Alexis Jeffers, who gave evidence for the defendants, acknowledged that he too socialized at the beach bar on occasion. The evidence presented on behalf of Mr. Liburd was that the property was developed with a loan from the Development Bank of Saint Kitts and Nevis and the Nevis Cooperative Credit Union in the sum of \$324,700.00EC. It is unclear as to the exact dates of the loans but it was asserted that they have since been fully repaid. The court is also not exactly clear on the exact dates of the construction of all of the various buildings on the property. On balance however it appears that the infrastructure was put in place towards the latter half of the 1980s.
- [4] Mr. Liburd claims that in 1995 he approached the defendants with a view to purchasing the property, in light of the significant investment he had made in it. Although the property belonged to the crown, it appears that after some time the annual rent became payable to the NHLDC. It is alleged that Mr. Liburd received a letter on 1st June, 1995 from the NHLDC, signed by its then general manager, Mr. Livingston Herbert. The letter stated that the board of directors had agreed to sell the property to Mr. Liburd. However, the letter does not contain the salient terms of an agreement of that nature. No purchase price was mentioned and no date was set by which the transaction was to have been completed. Nothing happened in relation to this until 1998 when Mr. Liburd offered the sum of \$2.00EC per square foot as consideration for the property. He states in

his letter that this offer was based on the substantial investments that he had made in the infrastructural development of the land.

- [5] There was again no evidence of any formal communication between the parties on the offer for purchase of the land until 2006. At that point there was a change in government on the island of Nevis and it was stated that Mr. Liburd re-engaged the government with his desire to purchase the property. It is claimed that he was given the assurances that his investment would not be in vain, as it was a policy of the government to give first refusal rights to longstanding occupiers of business property. He asserts therefore, that he had a legitimate expectation that he would have been offered the opportunity to purchase the property and that his investments had been protected.
- [6] Despite this alleged assurance, nothing happened in relation to this pending sale and in 2013 there was yet another change in government in Nevis. Mr. Alexis Jeffers was installed as the Honourable Minister of Agriculture and Lands, and ex officio chairman of the board of the NHLDC. Mr. Carl Liburd, who is the son of Mr. Zephaniah Liburd, swore to the affidavit in support of the claim. He states that on behalf of his father, he met with Minister Jeffers as well as Mr. Vance Amory, who was then Premier of Nevis. He states that this was in an attempt to finalise the sale of the property and to add his name to the existing lease. The exact date of these meetings was not identified but was said to have taken place between 2013 and 2017.
- [7] Mr. Carl Liburd asserts that sometime in 2014, Mr. Liburd was approached by Mr. Collin Tyrell, who was the legal advisor to the Nevis Island Administration. He states that Mr. Tyrell informed them that he was instructed to add Mr. Carl Liburd to the lease and to finalise the purchase of the property. Mr. Carl Liburd states that he attended the office of Mr. Tyrell and was given the assurances that the sale and lease agreement would be finalized. After hearing nothing further from Mr. Tyrell, Mr. Carl Liburd states that he and his father again approached Premier Amory and was again given the assurances that the agreement would be finalized and the lease renewed. I pause here to state that I am unsure as to why there needed to be a renewal of the lease if there was a pending sale of the property. These conversations allegedly took place two years prior to the expiration of the lease. The affidavit goes on to state that Mr. Liburd heard nothing further from the Defendants and therefore wrote the Premier on 24th September, 2015. Although a business proposal was said to have been attached to the letter, this was not presented into evidence. The

letter expressed a desire to have discussions with a view to finalizing the terms of sale and a renewal of the lease.

[8] Mr. Carl Liburd states that his father had instructed him to continue servicing the lease even though it expired in 2016. He states that he paid the annual rent and that he maintained a zero balance. In cross examination however, Carl Liburd stated that his father was the one who had made payments towards the lease over the years of its subsistence and he was unable to present any documentary proof of this. He states however, that in 2018, when he attempted to pay the rent for that year, the payment was returned. He was then informed that the NHLDC would accept no further payments towards the lease. He goes on to state that in March of 2018 he attempted to clean up the property but the equipment operators were threatened by Minister Jeffers and left without doing so. He states that on the very next day Minister Jeffers and/or his agents arrived at the property and demolished the structures which Mr. Liburd had built on it. They removed the beach bar, boat shop, restaurant, generator room and toilet facilities. It is claimed that Mr. Liburd was greatly distressed by this and that it was done with malice and no notice provided to Mr. Liburd.

[9] On 10th April, 2018 attorneys acting on behalf of the NHLDC wrote to Mr. Liburd informing him that a decision had been taken not to renew the lease on account of the fact that he was in arrears of rent in the sum of \$4,388.00. A subsequent letter from the attorneys dated 10th May, 2018 also indicated that there had been no boat building activity on the premises for at least 15 years in addition to the fact that the property had in fact been unoccupied for five years. The letter also alleged that the buildings were dilapidated and that the government had taken a decision to lease the property to another entity which was expected to commence a major development shortly.

[10] On account of these developments Mr. Liburd sought the intervention of the court and commenced his application for leave to apply for judicial review and injunctive relief against the Defendants.

The Reply

[11] Hon. Alexis Jeffers gave evidence on behalf of the defendants. He states that as from 28th January, 2013 he has served as chairman of the board of the NHLDC. He acknowledged that a lease of the premises had been granted to Mr. Liburd in 1982. He states however, that the NHLDC's involvement in the matter had begun some time before 1993 at which point the claimant was

obligated to make the rental payments to the NHLDC. Minister Jeffers indicated that as far as the records reflected, Mr. Liburd was in fact in arrears of rent. He states that as at 2012, a balance of \$3,188.00EC was outstanding. It is apparent from Minister Jeffers' evidence that a letter was written to Mr. Liburd informing him of this state of affairs on 21st January, 2013. This letter was written by the then acting General Manager, Mr. Dwayne Warner. Minister Jeffers also indicates that since that letter was written, Mr. Liburd had only paid \$600.00EC towards the rent. Even that was paid after the lease had already expired. He claims that an outstanding balance of \$4,388.00EC was in fact owed to the NHLDC. He states further, that any receipt showing a zero balance on the arrears of rent must have been in error and Mr. Liburd was fully aware, based on the letter written to him, that there were outstanding arrears in rent. Minister Jeffers also points to a clause in the lease which states that where there are arrears of rent for 60 days the Lessor may re-enter the premises and terminate the lease.

[12] As far as Minister Jeffers was concerned, the lease of the premises expired "by effluxion of time." He states also that the lease contained no option to renew or purchase. It was therefore clear, in his view, that the intention of the parties was that Mr. Liburd would return the property to the government when the lease was expired in its "pristine state." Minister Jeffers points to a specific clause of the lease which states that:

"The Tenant may at his expense in all respects erect on the demised premises any building or erections necessary for the purpose of boat-building, dry docking and repairs PROVIDED ALWAYS that no structures of a permanent nature shall be built or erected or any addition or alteration made thereto except in accordance with plans and specifications previously approved by or on behalf of the Lessor."

[13] He also pointed out that clause 6 of the lease made it clear that any such permission from the government for improvements or additions to any buildings on the premises was required to be in writing. Clause 8 of the agreement also obligated Mr. Liburd to ensure that any dealings with buildings on the premises were done in a workmanlike manner and in full compliance with all state regulations. Mr. Liburd also covenanted to ensure that removal or alterations did not cause any damage to the premises. It was asserted therefore, that Mr. Liburd was in fact in breach of the agreement when he built permanent structures on the premises. It is alleged that he did so without

the express approval of the Lessor and that there was no evidence that he even obtained permission from the department of planning.

[14] Minister Jeffers acknowledged that there was an establishment known as “Mariner’s Pub” which was operated by Mr. Liburd on the premises for some time. I understand from the cross examination of Mr. Carl Liburd, that the pub was constructed in 1986. Minister Jeffers insists however, that this pub was destroyed by Hurricane Omar in 2008 and was never reopened. Minister Jeffers claims, with absolute certainty, that no business operated out of the Mariner’s Pub since the hurricane in 2008. He claims that since then the entire property had become overgrown with large trees. Illegal sand mining was habitually carried out there. There was also significant illegal dumping taking place on the site.

[15] Minister Jeffers acknowledged meeting with Mr. Carl Liburd sometime in 2014. He also acknowledged that Mr. Liburd had expressed a desire to renew the lease. He states however, that no commitment had been made at that meeting that the lease would be renewed. It was his evidence that he had informed Mr. Carl Liburd that if his father had wished for the lease to be renewed he had to satisfy the administration that he was serious by cleaning up the property as the general public was complaining about the unsightly state of the premises. Minister Jeffers indicates that he informed Mr. Carl Liburd that a restaurant owner nearby was also complaining about the unsightly and unsafe condition of the premises.

[16] It was Minister Jeffers’ evidence that Mr. Liburd did nothing to clean up the premises. He also states that his discussions never centered on a sale of the property. He was never contacted by Mr. Vance Amory or Mr. Colin Tyrell about any sale of the premises to Mr. Liburd. No application had ever been placed before the board for the lease or sale of the premises. At least not during Mr. Jeffers’ tenure as chairman of the NHLDC.

[17] Minister Jeffers goes on in his evidence to state that other persons had expressed an interest in leasing the premises. He states that the NHLDC, as agent of the crown, was interested in entertaining suitable proposals for the use of the premises. In March, 2018 the NHLDC decided to clear “*the small forest of overgrown trees that had sprouted on the premises*”. That was two years after the lease had expired. He states that this also involved clearing out the derelict structures

which were left on the property. It was asserted that even after the initial clearing of the premises, heavy duty equipment was needed in order to clear the site. He however denies that any demolition had taken place as it relates to buildings constructed there.

[18] In order to corroborate this aspect of Mr. Jeffers' evidence, the defendants called Jamal Hudson and George Chapman as witnesses in the case. These witnesses claimed to have been operators of an excavator and a truck respectively. They state that they were hired by the NHLDC to undertake the clearing of the premises. Mr. Hudson states that the site was extremely unsightly and was covered in very tall large trees over 10 feet in height. He states that there were 4 trucks operating on the site and that his work consisted mainly of digging out and leveling the clamon cherry trees which were dense and in a wild state. He also states that this took him 7 days to complete. He states that even before he could have gained access to the site the road had to be repaired because it was badly damaged and impassable.

[19] As it relates to the allegation that the buildings were demolished, Mr. Hudson states that this was not true. In fact, as far as he was concerned, there was nothing to demolish. All that was left of the buildings which were there was a shell. There were no windows, doors or even a roof on the buildings. Trees had grown in what was once the inside of the buildings. What was left of the building was dilapidated and close to collapse. There were apparently 3 other buildings closer to the entrance to the property which had remained untouched in that process. Mr. Chapman's evidence was generally in line with what was said by Mr. Hudson.

The Issues

[20] In her pre-trial submissions counsel for Mr. Liburd identified two issues for the court's consideration. These are:

- (a) Whether Mr. Liburd had a legitimate expectation that the lease in his favour would be renewed or that he would be able to buy the property; and
- (b) Whether Mr. Liburd is entitled to compensation for the demolition of his buildings and fixtures by the defendants in accordance with the doctrine of proprietary estoppel.

[21] However, in the submissions filed after trial, the issues identified by counsel were expanded to include the questions of whether an injunction should be granted prohibiting the defendants from entering and impairing the property on account of an equitable interest Mr. Liburd claims to have. Counsel also invites the court, in keeping with the claim form, to consider an order of certiorari quashing the decision to lease the premises to a third party developer. I will first address the submissions relating to proprietary estoppel and then go on to consider the public law elements of this case.

Proprietary Estoppel

[22] The first comment to be made on the issue of proprietary estoppel is that I am not of the view that counsel is entitled to raise this as an issue before the court at this stage in the proceedings. I note that when Mr. Liburd had filed his application for leave to apply for judicial review, the issue of proprietary estoppel did not arise. The court was concerned then as to whether leave ought to have been granted to proceed by way of judicial review, rather than in private law. The matter was therefore listed for a hearing in open court in keeping with part 56 of the CPR. Counsel, who then appeared for Mr. Liburd, argued that there were no private law remedies available to him and as such his claim was grounded in public law. Counsel went as far as abandoning all aspects of the claim grounded in contract. On that basis the court granted leave to bring a claim for judicial review which was rather limited to some of the relief which Mr. Liburd had initially sought in his application for leave. A submission grounded in proprietary estoppel takes the case somewhat outside the realm of what Mr. Liburd had been granted leave to pursue; subject to the obvious similarities between the principles of estoppel and legitimate expectation.

[23] Counsel for Mr. Liburd argues in her closing submissions that “[t]he circumstances presented by the facts before the court also cause the private law doctrine of proprietary estoppel to arise and thereby gives way to the remedy in public law, mandamus, that is sought in judicial review.” For my part, I find this submission to be somewhat confusing, as counsel had initially indicated in her identification of the issues that reliance on the doctrine of proprietary estoppel was based on Mr. Liburd’s claim for compensatory damages as outlined in the claim form. If counsel wished to argue for a public law remedy then I see no reason not to confine those arguments to the legitimate

expectation which Mr. Liburd claims, rather than an argument grounded in proprietary estoppel. In any event, I am also of the view that even if the court were entitled to consider these submissions at this stage, a claim for proprietary estoppel has simply not been made out on the facts of this case.

[24] There are generally 3 elements which Mr. Liburd must prove if he is to succeed in a case of proprietary estoppel. These are (a) he must show that there has been an assurance given to him, whether expressly or impliedly, that he would have obtained an interest in the land, (b) that the defendants had resiled on those assurances and representations given to him and (c) that in such reliance on the assurances, he has acted to his detriment.

[25] In the case of *Theresa Henry et al v Calixtus Henry*¹, the Privy Council noted that ***“the existence and extent of any equity arising under the doctrine of proprietary estoppel is nevertheless dependent on all the circumstances of the particular case, including the nature and quality of any detriment suffered by the claimant in reliance on the defendant’s assurances.”*** The court is therefore encouraged to consider the issues in the round and it has been noted that ***“... the question of whether it would be unconscionable for a court to allow the promisor to resile from the assurance or representation made or given to a claimant, is to be approached in the round, as part of a broad inquiry.”***²

[26] In examining the circumstances of this case, I am not of the view that the evidence is sufficient to find that any assurances had been made to Mr. Liburd by the defendants. Counsel relies firstly on a letter written in 1995 in which it was stated that the Board of the NHLDC had agreed to sell the property to him. However, as was rightly conceded by counsel who appeared for Mr. Liburd at the hearing of the application for leave, that letter can only be viewed as an invitation to treat. It contained no specific terms under which the property was to be sold and certainly could not legally bind the NHLDC to any assurance made therein without finalizing the terms of the agreement. It is doubtful that this letter is even sufficient to raise an equity in favour of Mr. Liburd. In any event, that letter was written 21 years prior to the expiration of the lease and 23 years prior to the defendants taking possession of the premises. The failure to finalise the terms of that invitation in such a long

¹ [2010] UKPC 3

² Mathilda Nelson v. Alexis Alcide SLUHCVP2018/0002 paragraph 48

time draws me to the conclusion that the offer was simply no longer available to Mr. Liburd and cannot constitute an assurance upon which an estoppel would arise.

[27] It is also argued that there were ongoing discussions between the parties regarding the sale or lease of the premises. I state firstly that ongoing discussions do not naturally constitute an assurance upon which an equity can be raised. The discussions include alleged conversations with the then Premier Mr. Vance Amory which Mr. Collin Tyrell sought to advance through the legal department of the Nevis Island Administration. For reasons which I will outline later on in this judgment, I am not of the view that Mr. Amory had the authority to make any assurances which were binding upon the defendants and upon which Mr. Liburd he was entitled to rely. The court would not be minded to encourage such an approach to the management of the affairs of the NHLDC. As it relates to the discussions which Mr. Carl Liburd had with Minister Jeffers, I accept the minister's evidence as it relates to the nature of the conversations and find that no assurances had been made to Mr. Liburd in any of those conversations that the property would have been sold to him or that the lease would be renewed.

[28] However, even if the court were to have found that assurances had been made to Mr. Liburd, I can also find no evidence that he had relied on these assurances to his detriment. As counsel for Mr. Liburd pointed out in her own submissions, *"the buildings of the claimant were built since the late 1980s"*. If that submission is correct, then it means that Mr. Liburd had made his investments in the property long before the alleged assurances were made to him. I find the same to be the case as it relates to the road and other infrastructure that he claims to have put in place. If he constructed his buildings and other investments in the 1980s, then he would have done so on account of the lease agreement entered into in 1982 and not on the premise of a letter written to him in 1995. The lease made no provision for a renewal as a matter of course and no assurances were given to him in the lease that he would be entitled to purchase the property upon its expiration. In fact the lease created an obligation for him to remove his buildings upon its expiration, unless the crown had given him notice of its intention to purchase the buildings from him prior to this.

[29] In addition, it is submitted that Mr. Liburd continued to make investments in the property, but no evidence was presented as to precisely what these investments were and when they were made. Mr. Carl Liburd also insists that the claimant had further business development plans for the use of

the premises which he had presented to Premier Amory. However, nothing of that nature was presented in evidence. If anything, the evidence suggests that all commercial operations had ceased at least 3 years prior to the expiration of the lease and 5 years prior to the defendants regaining possession of the premises by clearing the site. I find on balance that the property had in fact become derelict and somewhat abandoned by the time the defendants had begun clearing the site. I accept Minister Jeffers' evidence where he states that he had requested of Mr. Liburd to show good faith by cleaning up the property before a lease could be considered. That was a full 4 years prior to the clearing of the site by the defendants. I also accept the evidence of the defendants that no buildings were in fact demolished in that what was cleared from the site had become derelict and had fallen apart. In examining the evidence as a whole, these are simply not the circumstances on which the court would have been prepared to find that an estoppel had arisen in Mr. Liburd's favour.

Legitimate Expectation

[30] The doctrine of legitimate expectation in public law is essentially designed to prevent an abuse of power. It contains parallels to the equitable doctrine of estoppel. Where a lawful promise has been made to a person, which in itself induces a legitimate expectation that a substantive benefit will be derived from it, the court may intervene to prevent the public authority from taking a new and different course of action, if to do so would be abusive of its powers. Such an expectation may also be procedural, in that, although there may be no guarantee of a substantive benefit, the claimant may be successful in a review of the public authority's decision to renege on a process which it had promised to undertake prior to making its decision.

[31] As was noted by the Privy Council in the case of *Paponette et al v. the AG*³, “...once the **legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.**” Their Lordships also went on to note the following:

³ [2010] UKPC 32

“The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest.”

[32] The first question for consideration therefore, is whether there has been any promise or practice on the part of the defendants which creates this legitimate expectation, whether substantive or procedural, in Mr. Liburd's mind. It is his duty to prove this. As I have found in my assessment of counsel's arguments relating to proprietary estoppel, I can find no promise or practice made which induced such an expectation. As in that instance, counsel relies firstly on Mr. Liburd's negotiations for the sale of the property which dates back to the NHLDC's letter of 1995. She argues that *“there is no dispute that the claimant was given a written assurance, or promise, that his request to purchase the land was approved by the board of the 1st defendant by letter dated 1995.”* Counsel argues therefore that the defendants are therefore bound *“by the clear promise or assurance made by the 1995 board.”* For my part, I do not agree with that submission.

[33] No doubt the letter would have given Mr. Liburd the assurance that a sale may take place; provided the terms are amenable to both sides. But in private law this amounts to no more than an invitation to treat. In public law however, it is not an unqualified promise which was clear, unambiguous and devoid of relevant qualification sufficient to create a legitimate expectation. Mr. Liburd took a period of 3 years to respond to this letter. His offer of \$2.00 per square foot for the property was not accepted as there was no response to it. His counsel at the hearing of the application for leave accepted that this would not constitute a contract and I am of the view that it raises no legitimate expectation either; especially given the amount of time which had elapsed since the letter of 1995 and the expiration of the lease in 2016. An invitation of this nature to enter into contractual relations cannot be open in perpetuity. With the passage of time this invitation would have certainly lapsed

along with any legitimate expectation arising from it. I do not find a public law remedy to be available to Mr. Liburd as has been claimed.

[34] In the evidence presented, Mr. Liburd claims to have written to then Premier Vance Amory in 2015 outlining his investment in the property and reiterating his desire to finalise a sale. Mr. Carl Liburd also notes in his evidence that the Premier had indicated in a conversation that it was the policy of the government to allow for first refusal rights for persons in occupation of the premises if there is an intention to sell. In closing submissions, counsel for Mr. Liburd asks that I take into account the fact that the Premier then instructed Mr. Collin Tyrell of the Legal Department of the NIA to finalise the sale agreement and include Mr. Carl Liburd's name on the lease. This, it is also argued, gives rise to the expectation that Mr. Liburd would be allowed to purchase the premises. I do not accept these assertions to have been proven. However, I also do not agree that these actions on the part of the Premier, even if they are held to be true, would create a legitimate expectation upon which Mr. Liburd is entitled to rely as against the defendants.

[35] Firstly, it must be reiterated that a legitimate expectation is only induced by a lawful promise or practice on the part of a public authority. The court should be very slow to sanction practices of this nature which are contrary to clear legislative procedures in a way which may undermine good governance. The public must have an expectation that institutions like the NHLDC are properly managed and adhere to good governance practices. Given the scope of its authority I am of the view that the NHLDC is amenable to judicial review in the right circumstances. However, both counsel have rightly pointed to the powers and corporate structure of the NHLDC. Nowhere in the legislation is the Premier empowered to unilaterally determine the manner in which the NHLDC carries out its functions as an agent of the crown. The corporation is managed by a board of directors of whom the 2nd defendant is chairman. Even he cannot unilaterally bind the corporation in this way. For Mr. Liburd to have by-passed the NHLDC and taken his case directly to the Premier is not a practice which I am prepared to sanction by the use of the court's discretion in public law.

[36] In any event, at most the Premier may have been able to take the matter to the Cabinet or to enquire of the NHLDC as to the status of its dealings with Mr. Liburd. But there are no good public policy reasons for the court to sanction an approach where the Premier would unilaterally decide to bind the NHLDC in the management of its affairs in this way. These actions cannot be relied upon

as inducing a legitimate expectation on the part of Mr. Liburd as against the NHLDC. I have also been presented with no evidence to show that there is any direct policy on the part of the NHLDC to offer first refusal rights to occupiers of premises belonging to the crown. I do not accept this assertion to have been proven.

[37] If Mr. Liburd intends to augment his case, it is also his duty to prove that he has acted to his detriment in reliance of the assurances he was allegedly given. I can find no evidence of this in the case presented. It is certain that Mr. Liburd had made investments in the property in the 1980s. However, that was even before the NHLDC's letter to him in 1995. For reasons which I have already explained earlier, I have no evidence before me of exactly what investments he would have made after the letter of 1995. Minister Jeffers states that the property had been abandoned in 2008. However, the evidence suggests to me that there may have been economic activity on the premises as late as 2013. The letter written by attorneys acting on behalf of the NHLDC in 2018 appears to acknowledge this where it states that the property had been abandoned for 5 years prior to that letter; although on balance I do not find this to have involved the business of ship building which was the basis of the lease in the first place. The evidence is simply not enough to find that Mr. Liburd had made any substantial investments in the property on account of the promise which had been made to him. On the contrary, it appears that over the years his commercial activities had in fact declined.

[38] One other issue which the court may consider in a claim on legitimate expectation is whether there are overriding interests on which the public authority had relied which entitles it to frustrate the expectation that it had created by its assurances⁴. In public law the court may also balance the claimant's reliance on the assurances made on the one hand, with the public interest in general on the other. The NHLDC is not managing its own private property here. It is acting as an agent of the crown and must at all times act with the public interest in mind. Whilst I have found that no assurances were made to Mr. Liburd, even if that were not the case, I find that the NHLDC would have been justified in considering the manner in which this property had been used towards the latter part of the lease. This is a concern which was expressed by Minister Jeffers in his own evidence.

⁴ see *Paponette et al v. the AG*

[39] I find as a matter of fact that Mr. Liburd's investments had been in excess of 30 years old. He had managed his business affairs and reaped the benefits therefrom in a manner which by far exceeded the original intention of the lease. By the end of the lease however, the property had become derelict with no commercial activity taking place. I see it as being against the public interest to bind the NHLDC in any way to the renewal of this lease and the sale of the property to Mr. Liburd in such circumstances. I would therefore deny any remedy which is grounded on legitimate expectation and hold that there are no public law remedies available to Mr. Liburd.

Further Submissions

[40] I make just a few comments on submissions which had been put forward by the defendants as it relates to Mr. Liburd's case. Firstly, it is argued that Mr. Liburd was in fact in breach of the agreement in that he had constructed buildings without written permission from the government and having not obtained planning permission. Whilst I do agree that Mr. Liburd had not presented any written proof of the agreement to construct the buildings, I would not have been minded to dismiss his claim on that basis. To my mind, it would have certainly been unconscionable for the government or the NHLDC to have allowed such an investment in the property and do nothing about it for in excess of 30 years only to renege on a promise to renew the lease or sell the property to Mr. Liburd on that basis; especially if he had proven that he had acted to his detriment in reliance on that promise. Had such promises been made, Mr. Liburd may very well have succeeded on his claim; subject only to the court's lingering doubt as to whether a private law claim was not more appropriate in the circumstances.

[41] Secondly, as it relates to the issue of the outstanding rent, it remains unclear to me as to the exact status of the arrears. A letter was certainly written to Mr. Liburd in January of 2013 claiming that he was in arrears. There is however no evidence that this letter had ever been served on him. On the other hand, he was also unable to present any proof that he had kept up with his rental payments over the years. In any event, even without reconciling this particular dispute in the facts, I do not find merely paying \$600 in 2017 to be enough to constitute any legitimate expectation. There are simply too many variables and ambiguities as it relates to this alleged expectation. For example, the original lease was said to be for the purpose of ship building and related activities such as

docking and repairs. That appears to me to be a skill which is peculiar to Mr. Liburd. However, the evidence suggests to me that there were no ship building activities taking place for quite some time. I understand that Mr. Liburd is also now in his 90s and the evidence again suggests that he is unwell and not currently engaged in that kind of activity. If the lease was to be renewed therefore, what would be the terms of the lease? What activities are to be conducted on the property? Would \$600 even be adequate annual consideration for a property of such value? These factors certainly weigh against the notion that any legitimate expectation can be found to have existed in the circumstances of this case.

[42] Thirdly, counsel for the defendants argues that there is no evidence that the property was leased to a third party investor by the defendants. Counsel acknowledges that by letter dated 10th May, 2018, attorneys for the NHLDC noted that *“the government decided to lease the property to another entity which is expected to start a major development shortly.”* However, counsel argues that the attorney’s representation in the letter was that it is the government who made that decision and not the defendants. Counsel goes on to point out that although Minister Jeffers acknowledged in cross examination that the lands were being leased to a new tenant, he never stated that the lease was by the NHLDC. He goes on to state that it is clear that the NHLDC was acting as agent of the crown, the lease was with the crown and that the NHLDC was collecting rent on behalf of the crown. Therefore there is no evidence that the NHLDC had made any decision about the lease of the premises to a third party.

[43] However for my part, I wish to express my firm disagreement with that submission, as one must be cautious about taking an overly pedantic approach to evidence in cases involving public (or quasi) bodies in this way. There are simply no good public policy reasons for doing so and such an approach can undermine any confidence in the public’s dealings with the NHLDC. When one examines the evidence, it seems rather clear that the NHLDC plays a much more significant role in managing, negotiating and facilitating the lease of properties such as the one which is the subject of this claim. Counsel’s submission also does not adequately reflect what Minister Jeffers actually had to say, as well as the general nature of the evidence presented in this case. The court is somewhat concerned with this, as I am of the view that the NHLDC is not a passive agent of the crown in such circumstances and the nature of the submissions put forward by counsel appears to

overlook this reality and may give a wrong impression as to the manner in which the NHLDC conducts its affairs in general.

[44] Firstly, as far back as 1995 the general manager of the NHLDC wrote to Mr. Liburd stating that its board had decided to sell the property to him. Clearly, the NHLDC had thought that it was capable of making such a decision. Secondly, Minister Jeffers in his own affidavit acknowledged that the NHLDC, as agent of the crown, was desirous of entertaining suitable proposals for the use of the property and that persons had in fact approached the NHLDC for that purpose. His evidence in the affidavit was that Mr. Liburd had not presented any proposal to the board of the NHLDC for consideration. This again suggests that as agent of the crown, the NHLDC was perfectly capable of considering and making a decision on whether to at least propose the lease of the premises to Mr. Liburd or to a third party investor. Lastly, as it relates to what Minister Jeffers had to say in cross examination, it was not as counsel has suggested in his submissions. The Minister was quite clear in saying that “we” had considered many investors and had settled on an investor in 2018. He stated that he saw nothing wrong if “we” were to engage someone in relation to the property because it was already back in the hands of the crown. He was giving evidence on behalf of himself and the NHLDC and I find that on balance he acknowledged the role played by the NHLDC in facilitating a new lease of the property to a third party.

[45] No one is of any doubt that a lease of crown property ultimately rests with the crown and executed as such. But the crown ought not to be seen as a monolithic institution behind which organisations like the NHLDC are entitled to hide when it is called upon to account for its actions; whether in private or public law. For practical purposes the Crown operates through its agents. Whilst I agree that a proper procedure must be in place for the use of and alienation of public lands in this way, it appears that counsel’s submissions does not adequately reflect the role played by the NHLDC. When it comes to the management of crown lands in Nevis, I have little doubt that the NHLDC often finds itself in the position of a competent agent on behalf of the crown capable of making decisions and facilitating the fulfillment of the promises it actively makes; or at least attempting in good faith to do so. If the NHLDC is of the view that it has no authority to make decisions in relation to crown lands or does not wish to be held accountable for such decisions, then it should refrain from putting itself forward as having such an agency.

[46] Therefore, persons who deal with the NHLDC must have the certainty that when it enters into agreements or makes representations it does not hide behind the cloak of pedantic approaches to the law to renege on its bargain or to escape accountability for the decisions it actively makes. Whilst I have found that nothing wrong was done by the NHLDC, I express a concern that the submissions put forward may have significant implications on the certainty which is required when dealing with the NHLDC, whether by way of private law or in its accountability as a somewhat public institution. I would not sanction this approach.

[47] I find therefore, that on balance, the evidence proves that the NHLDC did enter into negotiations with a third party developer and did agree to facilitate the lease of the premises to someone other than Mr. Liburd. That is the substance of the submission made by Mr. Liburd. The fact that it did so as agent of the crown does not allow NHLDC to escape accountability in this way. However, I also find that the NHLDC was perfectly within its right to engage the third party developer as agent of the crown and therefore would have done nothing wrong in facilitating the lease of the premises to a third party developer. There had been no assurances made to Mr. Liburd by the NHLDC which gives rise to a legitimate expectation in public law. There is no evidence that he acted to his detriment on such an assurance. Even if Mr. Liburd was entitled to rely on the doctrine of legitimate expectation, there are also significant overriding interests put forward by Minister Jeffers to justify the actions of the NHLDC. The property had become derelict and there were no commercial activities taking place to justify the court's intervention in this case by the use of the discretion available to it in public law.

Entitlement to Damages

[48] One other issue to address is that of Mr. Liburd's entitlement to damages. During the course of the trial, Carl Liburd sought to tender into evidence, a valuation of the buildings which he claimed to have been demolished by the defendants. The valuation was not previously disclosed at the case management stage and would have also amounted to expert evidence for which the maker of that statement was not presented for cross examination. Counsel for the defendants objected to the tendering of this document and I agree with the submissions made. It would not be appropriate to simply allow an expert's report to be tendered in this way. In addition, the report was allegedly made after the site was already cleared and the evidence is that some reliance may have been

placed on photographs Mr. Carl Liburd had previously taken of the site. These were not tendered into evidence. I would therefore not place reliance on the report.

[49] As I have stated earlier, the evidence suggests that what was cleared from the site were derelict buildings which were already in a state of disrepair and collapse. I can find no legitimate expectation that Mr. Liburd would have been entitled to consultation prior to clearing the site after it had been abandoned for 5 years. The other buildings which were constructed by him were not destroyed and the parties would do well to jointly agree on a way forward in dealing with them. I would however find that there is no right to compensation in the circumstances of this case.

Conclusions

[50] In conclusion I find that Mr. Liburd is unable to rely on the doctrine of proprietary estoppel in this case. Even if I were to be wrong about that, I also find that the facts do not support a claim for proprietary estoppel. For the same reasons, I do not find that any legitimate expectation had been created that the property would have been leased or sold to Mr. Liburd. I am also not satisfied that buildings were demolished by the defendants with no consultation with Mr. Liburd and would therefore deny his claim for compensatory damages.

[51] The case is therefore dismissed with no order as to costs in keeping with the provisions of part 56 of the CPR2000.

**Ermin Moise
High Court Judge**

By the Court

Registrar