

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

**GRENADA
CLAIM NO. GDAHCV2021/0126**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO PART 56 OF THE
CIVIL PROCEDURE RULES 2000 (AS AMENDED)**

AND

**IN THE MATTER OF THE PHYSICAL PLANNING AND DEVELOPMENT CONTROL ACT NO. 23 OF
2016**

AND

**IN THE MATTER OF THE DECISION OF THE PLANNING AND DEVELOPMENT AUTHORITY TO
GRANT APPROVALS FOR DEVELOPMENTS AT LA SAGESSE IN THE PARISH OF ST. DAVID,
LEVERA IN THE PARISH OF ST. PATRICK AND MT. HARTMAN IN THE PARISH OF ST. GEORGE**

AND

**IN THE MATTER OF THE PLANNING AND DEVELOPMENT AUTHORITY FAILING TO KEEP A
PUBLICLY ACCESSIBLE REGISTER IN ACCORDANCE WITH THE PHYSICAL PLANNING AND
DEVELOPMENT CONTROL ACT 2016**

BETWEEN:

GRENADA LAND ACTORS INC.

Claimant

and

THE PLANNING AND DEVELOPMENT AUTHORITY

Defendant

Appearances:

Ms. Rita Joseph-Olivetti for the Claimant

Ms. Dia Forrester, Attorney General with her Mrs. Karen Reid-Ballantyne, Solicitor General,

Ms. Alleyna Cheesman, Ms. Dominique Lovell and Ms. Caryn Adams for the Defendant

Mr. B. St. Michael Hylton QC. with him Mrs. Daniella Williams-Mitchell and Mr. Sundiata Gibbs
for Hartman Group Limited

Mr. John Carrington QC. with him Mrs. Sheila Harris and Ms. Donnika Maxwell for Singapore
Heng Sheng (Grenada) Development Pte Ltd

Mrs. Sabrita Khan-Ramdhani for Range (Developments) Grenada Limited

2021: June 24;
September 10.

DECISION

- [1] **GLASGOW, J.:** This decision addresses applications made by two companies, Hartman Group Limited (Hartman Group) and Range Developments (Grenada) Limited, (Range) (together, the applicants). The applicants along with Singapore Heng Sheng (Grenada) Development Pte. Ltd (Heng Sheng) are involved in the development of hotels and other related tourism projects in Grenada. The applicants have come to court to each seek an order to be added as parties to the judicial review proceedings filed herein by the claimant, Grenada Land Actors Inc. (GLA). GLA filed judicial review proceedings on 26th March 2021 in order to challenge the decisions of the defendant, the Planning and Development Authority, (Planning Authority). GLA is dissatisfied with the Planning Authority's decision to grant planning permission to the applicants for the construction of their hotels at two sites situated at Mt. Hartman in the parish of Saint George and at La Sagesse in the parish of Saint David.

Hartman Group's case

- [2] On 9th June 2021, the applicant, Hartman Group, filed an application pursuant to CPR 19.2 to be joined as an interested party to the proceedings and to be permitted to file affidavit evidence and submissions in the proceedings.
- [3] The grounds of Hartman Group's application are:
- (1) Rule 19.2 of the Eastern Caribbean Civil Procedure Rules 2000 provides that the court may add a new party if there is an issue involving that party which is connected to the matters in dispute in the proceedings and it is desirable to add that new party in order to resolve this issue. Rule 19.3 provides that an application to add a party may be made by a person who wishes to become a party.
 - (2) Hartman Group was not served with the application for leave for judicial review filed on 26th March, 2021 and therefore did not have the opportunity to intervene in that application and address the court on the issue of whether leave should have been granted.

- (3) Hartman Group is the entity that applied for planning permission and therefore is able to provide the court with much of the evidence relevant to determining the issues raised in this claim.
- (4) In addition, Hartman Group has made a significant investment in the Mt. Hartman Development and would suffer great prejudice if GLA's claim succeeds.
- (5) In those circumstances, it is desirable to add Hartman Group as a party to these proceedings to resolve any issues regarding the grant of planning permission for the Mt. Hartman Development.
- (6) There would be no prejudice to any of the existing parties if the applicants were to be added as an interested party to these proceedings and, in the circumstances, it is just and equitable to make such an order.

[4] Hartman Group's application is supported by the affidavit evidence of Bo Xu, who deposes that:

- (1) He is employed as the Chairman's Assistant with Hartman Group.
- (2) He says that Hartman Group was incorporated in Grenada on 18th November, 2014. Hartman Group, together with its affiliated company Hartman Education Enterprises Limited is in the process of developing lands located at Mt. Hartman in St. George, Grenada.
- (3) On 4th September 2015, the defendant, the Planning Authority, granted Hartman Group approval in principle for the development of the Mt. Hartman property. The approval in principle was for the construction of a resort complex.
- (4) On 30th November 2015, Hartman Group applied for permission to commence construction of the complex. This application was granted by the Planning Authority on 30th October 2019 for Phase 0 which involved the building of a showroom, interpretive centre, seventeen bedroom villas, lounge bar, office and a conference room.

- (5) Further, on 28th December 2020, the Planning Authority approved modifications to the master plan so that the development is now for the construction of a university campus and student village.
- (6) Since the grant of the approval in principle in 2015 Hartman Group has expended significant sums of money on the development, the first phase of which is still underway. Given the significant sums invested in constructing the development, it would suffer great prejudice if the GLA's claim succeeds.
- (7) Hartman Group was not served with the claim filed by GLA and therefore did not have the opportunity to intervene in that application and address the court on the issue of whether leave should have been granted.
- (8) Hartman Group is in possession of documents relevant to the grant of the planning permission. Accordingly, it is well placed to provide the court with evidence and the context which would assist it in justly deciding the issues presented on this claim.
- (9) In the premises, Hartman Group asks the court to be added as a party to these proceedings.

Range Developments' Case

- [5] On 1st June 2021, Range Developments (Grenada) Limited filed a notice of application to be joined as a defendant in the proceedings. In summary, the grounds of Range's application are:
- (1) By virtue of CPR 19.3(2)(b) any person may apply to be joined as a party in any proceedings before the court.
 - (2) GLA has filed a claim for judicial review, among other reliefs, against the decision of the Planning Authority made on 29th January 2020 giving permission to "La Sagesse Development".
 - (3) The La Sagesse Development is a hotel project being developed by Range at La Sagesse in the parish of Saint David.

- (4) The business of Range and its investors will be adversely affected by these proceedings brought by GLA.
- (5) It became aware that the fixed date claim for judicial review together with supporting affidavits was filed on 14th April 2021.
- (6) The claim seeks orders which if granted will halt the project and this will have adverse legal and administrative consequences for Range.
- (7) The joinder of Range serves a relevant and proper purpose to resolving all issues which are raised in the claim and rights on which it will have a direct impact.

[6] Range's application is supported by the affidavit evidence of Mohammed Asaria. The salient points are that:

- (1) The hotel project is an approved Citizenship by Investment project with an investment involving over US\$100,000,000.00. The construction, marketing and sales in relation to the project has begun and at present many Grenadians are employed on the project.
- (2) To date, millions of dollars have already been expended on this project and significant losses will be suffered by Range should this project be halted or affected by the claim.
- (3) Even though the claim relates to challenges to planning permission, there are several significant factors which justifies the joinder application. One such factor is that one or more of the promoters or principals of GLA were in communication with Range many months ago on issues related to the development.
- (4) GLA is relying on affidavit evidence which speaks to some aspects of these communications and if Range is unable to present evidence, the court would be left with one version of the facts described. These matters require full ventilation and accordingly evidence from Range participating as a full defendant is critical if justice is to be served in this matter. Additionally, GLA is seeking certain relief which relates to a reconsideration of the decision to grant planning permission to Range. Again, the interaction and matters raised between GLA and Range are likely to show that such reconsideration would be meaningless.

- (5) GLA by its own evidence has opened the door. Range is therefore best situated to present this court with evidence to resolve those evidential issues. Simply allowing Range to make submissions as an interested party will not be sufficient. Range should be allowed to give evidence so that all the issues may be fully ventilated.
- (6) If joinder is allowed, Range intends to challenge the standing of GLA by showing reference to the evidence of such communications that the claim is frivolous and vexatious.

Hartman Group's Submissions

- [7] On 25th June 2021, Hartman Group filed written submissions in support of its application. The submissions addressed the issues:
- (1) whether Hartman Group should be added as a party since it would be directly impacted by the outcome of the proceedings in the substantive matter;
 - (2) whether Hartman Group's participation in the proceedings ought to be restricted as envisaged by CPR 56.11;
 - (3) whether GLA ought to be awarded costs as a result of Hartman Group's participation in the proceedings.
- [8] Counsel for Hartman Group submits that any decision to add a party is in the discretion of the court and depends on the circumstances of each particular case. The authorities elucidate that adding a party whose legal rights would be directly affected by the outcome of judicial review proceedings is necessary in the interests of justice. Counsel relies on the dictum of Finlay CJ in **Denis O'Keeffe v An Bord Pleanála and Francis O'Brien and the Attorney General**¹. Further, counsel explains that regional courts have taken a similar approach to judicial review cases involving the grant of planning permission. Counsel refers the court to the High Court decision of **Lavaggi v the Physical Planning and Development Board**², where Alleyne J stated at paragraph 8:

"As I understand it there is no opposition to the application that Wireless Ventures be added as a party to the Judicial Review proceedings, but in any event I am of the view that the application is meritorious, and I have no hesitation in granting that order. It is

¹ [1993] 1 IR 39

² SVGHCV2003/0184 (unreported)

accordingly ordered that Wireless Ventures (St. Vincent) Limited be joined as a third party to these proceedings, and that all documents exchanged in these proceedings be served on the third party within 7 days of the making of this order.³ (Underlining supplied)

And at paragraph 12:

“I agree...that Wireless Ventures may not seek to set aside the proceedings for judicial review, but may participate in these proceedings to the extent that their interests are prejudiced by these proceedings, and may take all necessary and proper steps to protect their legitimate interests.”

- [9] Additionally, counsel for Hartman Group relies on the decision of Wilkinson J in **Treasure Bay (St Lucia) Limited v The Gaming Authority**⁴ which concerned a challenge to the granting of planning permission. Counsel expounds that there is an emerging trend from the authorities to the effect that preventing a party from joining proceedings, where the relief sought would directly impact that party’s interest, is harmful to natural justice. Counsel cites the Court of Appeal dictum in **Treasure Bay Limited** that –

“notwithstanding that it was a decision of Cabinet which was the subject of the judicial review proceedings... it would have been particularly inimical to natural justice to prevent Cage from being joined as a party in the proceedings. Cage should be joined as an interested party in the judicial review proceedings⁵”.

- [10] Counsel states that if Hartman Group’s involvement is restricted to the presentation of submissions or a written brief it will need to rely on the Planning Authority to produce all the evidence necessary to protect its legal right. Further, Hartman Group’s claim that its interest in the outcome of the proceedings is substantial and is not in doubt. However, the GLA’s interest is in doubt. Therefore, counsel maintains that Hartman Group should be allowed to fully participate as an interested party so that it may protect its legitimate interest as formulated by Alleyne J in **Lavaggi**.

³ SVGHCV2003/0184 (unreported) at para. 8

⁴ SLUHCV2011/0456 (unreported)

⁵ SLUHCVAP2011/0045 (unreported) (Digest of Decisions dated 7th March 2012)

Overriding Objective

- [11] Hartman Group relies on CPR 1.2 which enjoins the court to give effect to the overriding objective when exercising any discretion. Reference is made to Halsbury's Laws of England, where the authors explain that –

“The parties to a claim for judicial review will normally be the claimant, the defendant and any interested parties. If any dispute arises as to whether additional parties should be joined, the court is under a duty to take into account how best to resolve the claim in the interests of justice in accordance with the overriding objective of the Civil Procedure Rules⁶.”

- [12] Therefore, merely permitting a limited intervention under CPR 56.11 in this case would not be enough to further the overriding objective. Further, counsel says that the best party to respond or give context to some of GLA's factual assertions is Hartman Group and not the Planning Authority. Hartman Group is in a position to provide helpful and relevant evidence that would assist the court to fully ventilate and resolve the issues raised in the claim. Henry J's exposition in **Goulbourne v The Bank of Nova Scotia**⁷ is cited as guidance for the manner in which the court ought to exercise its discretion to add a party-

“In exercising its discretion the court must do so judicially and have regard to the overriding objective to deal with cases justly. It is clear that the twin objective of CPR Part 19 is to ensure that the court:

- (a) Dispose of all the issues which arise on a claim; and
- (b) As far as possible involve all relevant parties who can assist the court to do so⁸.”

- [13] Counsel concludes by pointing out that GLA will not suffer any prejudice by Hartman Group joining the proceedings. Indeed, counsel argues, GLA has not filed any evidence in response to the application that indicates what, if any, prejudice it would suffer if Hartman Group were able to fully participate in these proceedings as a party.

⁶ Halsbury's Laws of England / Judicial Review (Vol 61A (2018)

⁷ SVGHCV2015/0014 (unreported) delivered on 25th March, 2015.

⁸ SVGHCV2015/0014 (unreported) delivered on 25th March, 2015 at para. 7

Range Developments' submissions

- [14] Range's stance is that a court is always empowered to add a party to proceedings in the interests of justice and to further the overriding objective. In that regard, Range posits that CPR 19.4(2)(b) allows a court to add a party of its own volition or further to an application made by a party or other interested person who wishes to be made a party. The court is obliged to give effect to the overriding objective to deal justly between the parties as explained by Henry J in **Javin Kevin Vinc Johnson v The AG of St. Vincent and the Grenadines**⁹.
- [15] Under CPR 19.3, a court has the widest discretion to join a party to resolve all of the issues which are raised in the matter. Range refers to the dictum of the Court of Appeal in **Fok Hei Yu et al v Basab Inc. et al**¹⁰, where Chief Justice Her Ladyship Dame Janice Pereira counselled that the discretion may be exercised *"if...it is desirable to do so, for the court to resolve all matters in dispute"*¹¹, or where there is an issue involving the proposed new party which is connected to the matter in dispute, and it is desirable to order the addition to enable the court to resolve that issue.
- [16] Under CPR 56.13, it has been recognised that third parties with sufficient interest will be allowed to join the proceedings. They will generally be permitted to file submissions and to make representations at the hearing. Counsel refers the court to the decision in **Treasure Bay Limited**, where Cage was allowed to file evidence and cross-examine witnesses at the trial of the claim for judicial review of the decisions of the Cabinet of Ministers and the Gaming Authority of Saint Lucia.
- [17] The case of **Javin Johnson v AG** recited above is also presented. In that case, the court allowed a third party to be joined as an interested party and to lead evidence in the proceedings. Range also presents **Anne Hendrick Bass v Director of Physical Planning & Ors.**¹² where a developer was allowed to be joined as an "intervening party". In light of the learning in those case, counsel concludes that where the interests of justice require a person who can show not only that he has sufficient interest to be joined as an interested party under CPR 56, but that it is

⁹ SVGHCV2019/0110

¹⁰ BVIHCMAP2014/0010

¹¹ BVIHCMAP2014/0010 at para. 11 at pages 8-9.

¹² NEVHCV2016/0014.

necessary for him to lead evidence which would assist in resolving the issues raised on the claim, then that person should be joined.

- [18] Range says that, as a developer, it is directly affected by any decision the court may make in this claim. This must certainly be of concern to the court especially when it considers GLA's delay in bringing the claim and the extent to which the approved project has advanced. These facts must also be weighed along with the evidence that Range and GLA were involved in discussions which amounted to consultations after the preliminary approval had been granted but before Range obtained final approval. GLA has complained of a failure to consult but it has not disclosed these prior discussions held with Range. Range intends to adduce this crucial evidence to the court and ought to be allowed to join the proceedings to do so.

GLA's submissions in reply to the joinder applications

- [19] Counsel for GLA reminds the court that in considering this joinder application, it is important that it continues to bear the nature of judicial review proceedings in mind. In essence, counsel states that the claim is for judicial review against the Planning and Development Authority. The substantial allegations refer to the Planning Authority's failure to comply with the provisions of the Physical Planning and Development Control Act, No. 23 OF 2016 (the Act).
- [20] With specific reference to the joinder applications, counsel notes that Range relies on CPR 19.3(2)(b) and 56.11 to be joined as a defendant. Hartman Group relies on CPR 19.2 and 19.3. CPR 19.2(3) gives the court the power to add a new party to the proceedings. CPR 19.3 sets out the procedure for adding the new parties. Counsel's view is that these provisions apply to ordinary claims and that they are not applicable to administrative orders. More particularly, they do not apply to claims for judicial review. Counsel contends that CPR 56 enacts a very specific regime for judicial review claim. In this regard, it contemplates the addition of parties pursuant to CPR 56.11 and 56.13 only. Accordingly, the governing rule is CPR 56.11 at this stage of the proceedings.
- [21] Counsel submits that in considering whether an applicant should be joined under CPR 56.11(2), the court must:

“(1) find that the applicant is a person with sufficient interest in the subject matter of the claim (interested person); and

(2) determine whether to exercise its discretion in his favour by considering the reasons why the applicant is seeking to join in bearing in mind all components of the overriding objective. The right to be heard should not be the sole consideration in that exercise.”

[22] Counsel argues that the mere finding that one is an interested person does not confer an automatic right to intervene in the manner envisaged by CPR 56.11. Reference is made to the Court of Appeal’s decision in **Treasure Bay Limited**. Counsel observes that there was no written judgment of the Court of Appeal, but a record of the reason for the oral ruling. Further, there is no record of the arguments made to the court or in relation to the provisions of CPR 19 or 56.11. In essence, counsel contends that the issues before this court were not considered and determined by the Court of Appeal in **Treasure Bay Limited**.

[23] Counsel also addressed the applicants’ reliance on **Virgin Islands Environmental Council v The Attorney General and Quorum Island BVI Ltd**¹³. She explains that **Quorum** dealt with an environmental case of great significance to the Virgin Islands. In that case, the court granted the developer, **Quorum**, permission to be joined as an interested party and not as a defendant. There was also no objection to The Planning Authority being substituted as a party to those proceedings. On appeal, the Court of Appeal overturned the addition of **Quorum** and determined that the Planning Authority was the proper party. Counsel insists that the court must be astute to minutely examine the basis on which joinder applications were made in judicial review matters.

[24] Counsel refers to the Trinidad and Tobago Court of Appeal case of **United States of America v Jack Warner and the Attorney-General of Trinidad and Tobago**¹⁴, where the United States of America (USA) applied to be joined as an interested party to judicial review proceedings commenced in the Trinidad and Tobago High Court by Mr. Jack Warner. The court found that the USA was an interested party, in that orders made on a successful outcome could have an adverse impact on its interests. However, the USA’s application was denied on the ground that it did not have a useful contribution to make which would justify the court in permitting it to participate¹⁵. Counsel therefore commends the learning from the Warner case. She relies on it

¹³ BVIHCV2007/0185 (High Court) and BVIHCVAP2009/021 (Court of Appeal per Rawlins CJ)

¹⁴ Trinidad and Tobago Civil Appeal No. P204 of 2016

¹⁵ Trinidad and Tobago Civil Appeal No. P204 of 2016 at paras. 26-27 (overriding objective) and 43-44 (useful contribution)

to support her arguments that apart from having a sufficient interest in the matter, the court is enjoined to determine what, if any, useful contribution the applicant would make in resolving the issues on the claim. Counsel also referred the court to the ruling of the Court of Appeal in **Fok Hei Yu v Basab**¹⁶ where Chief Justice, Her Ladyship Dame Janice Pereira emphasised that a court is not justified in joining a party merely because the party so desires without more.

Summary of reply to Hartman Group application

- [25] Counsel for GLA indicates that Mr. Xu's argument that Range holds documents which are relevant to the grant of the planning permission is a red herring. Counsel maintains that the Planning Authority is the decision maker. As such, it is the entity that is called upon to establish its compliance with the law when it granted permission to Hartman. The Planning Authority must be in possession of all relevant documents and information which it relied on to make its decision to grant planning permission to Hartman Group.
- [26] Counsel also responded to Hartman Group's claims that they have invested significant sums into the project and would suffer great prejudice if the claim succeeds. Counsel's response is that Hartman Group would not be without remedy in the event that GLA succeeds on its claim. Hartman Group can seek redress if it can establish that it was misled by the Planning Authority or anyone else and has suffered loss or damage. Counsel urges the court to conclude that prejudice or loss claimed by Hartman Group is not sufficient for it to be joined as a party to the proceedings. If there are consequential damages suffered by Hartman Group, then it has recourse against the Planning Authority and/or the Government in a separate action. Counsel relies on the case of **The Attorney-General Kendall Mendez v Barefoot Management Limited**¹⁷ where an investor was able to recover damages from public officials. The case of **Nevis Paradise Ltd v the Nevis Island Administration et al**¹⁸ is also presented as authority for this posture.
- [27] Counsel points out that Hartman Group does not have a right to be heard on the preliminary challenge taken by the Attorney General and this cannot clothe them with the right to be joined as a defendant or give evidence and make submissions¹⁹. In the premises, counsel suggests

¹⁶ BVIHCMAP2014/010

¹⁷ Civil Appeal No. 5 of 2014

¹⁸ SKBHCV2017/0093 at para. 165

¹⁹ Lavaggi v The Physical Planning and Development Board SVGHCV2003/0184

that Hartman has not shown that it has anything useful to add to the just resolution of this case except insofar as it relates to an interest in the outcome.

Summary of GLA's reply to Range Developments' application

[28] Counsel for GLA made a preliminary observation that Range relies on the affidavit evidence of Mr. Mohammed Asaria. However, she notes that Mr. Asaria did not depose what is his connection to Range and whether he is duly authorised to make the affidavit on behalf of Range. Counsel further questions whether Mr. Asaria has standing or authority to so act on behalf of Range. Therefore, counsel is of the view that the affidavit of Mr. Asaria should not be relied on to ground the application and accordingly ought to be disregarded.

[29] Counsel submits that the same arguments for Hartman Group are also applicable to Range. Any evidence Range wishes to offer on the substantive claim ought to be within the province of the Planning Authority which is the decision-making body. In any event, neither Range nor Hartman Group needs to be made defendants or parties to appear as witnesses for the Planning Authority. Counsel says that Range has not established what useful contribution it can make to the resolution of the claim to warrant the court joining it as a defendant or even as an interested person. The only interest it might have lies in the outcome of the case. Therefore, counsel prays to the court to dismiss the application and for costs to be paid forthwith.

Analysis

Whether Hartman Group and Range should be joined as interested parties

[30] The discourse on the extent to which Hartman Group and Range Developments should be allowed to participate in these proceedings brings into focus the ambit of the court's discretion as set out at CPR 19 and 56. 11 (2) (a) and (b). CPR 19.3 states:

- “(1) The court may add, substitute or remove a party on or without an application.
- (2) An application for permission to add, substitute or remove a party may be made by–
 - (a) an existing party; or
 - (b) a person who wishes to become a party.”

CPR 56.11 (1), (2) (a) and (b) state –

“ 56.11 (1) At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.

(2) In particular the judge may –

(a) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;

(b) direct whether any person or body having such interest –

(i) is to make submissions by way of written brief; or

(ii) may make oral submissions at the hearing.”

[31] My first observation is with respect to the construction of the rules in CPR 56. In this regard, I am constrained to follow the guidance of our Court of Appeal to the effect that CPR 56 is a self – containing set of procedural rules on the commencement and prosecution of administrative claims. The Court of Appeal in **Richard Frederick and Lucas Frederick v Comptroller of Customs and Attorney General**²⁰ elucidated that –

“[32]In my view, the observation of Lord Bingham in **Gairy** to the effect that claims for judicial review and claims for constitutional redress may fairly be regarded as “sui generis” is apt as there is no doubt that public law proceedings are a peculiar specie of civil proceedings falling outside the ambit of ordinary types of ‘civil proceedings’ contemplated by the CPA. To my mind, CPR 2000 recognizes this peculiar specie of civil proceedings by providing a regime of rules in Part 56 which are applicable only to proceedings of this kind. For example it sets out, who is to be served; the time within which service must be effected before the first hearing of the claim; and requires the claimant to file an affidavit giving certain particulars as to the defendants and service at least 7 days before the first hearing. When compared with the general rules relating to fixed date claims, one distinction which becomes readily apparent is the mandatory nature of the filing of an affidavit as required by CPR 56.9(4) whereas under the general rules, such an affidavit need only be filed where the defendant has failed to acknowledge service.

[33] Another peculiar feature appears at CPR 56.11 dealing with the first hearing. Under this rule, although the court’s general case management powers at a first hearing are preserved; it goes further and gives the court additional powers. For example, the judge is empowered to allow any person or body appearing to have a sufficient interest in the subject matter to be heard whether or not served with the claim form as well as direct the manner in which such person or body may be heard.

²⁰ SLUHCVP2008/037

[34] These specific provisions are clearly designed, in my view, to achieve a basic objective - that of ensuring the widest possible public participation, where warranted, in a matter involving public law considerations.”²¹ (Underlining supplied)

[32] Counsel for the GLA argues in furtherance of this posture that the application of CPR 19 is excluded by CPR 56 since CPR 56 sets out a specific regime of rules in regards to administrative claims. Counsel’s view is that CPR 56.11 and CPR 56.13 are the only rules that contemplate the involvement of interested parties. It is to these rules that the court must have recourse and not to CPR 19 as claimed by the applicants. There is considerable force in this argument especially in light of what our Court of Appeal has ruled in **Richard Fredrick** on the interpretation of CPR 56 as I have recited above. I have also found some assistance from a particular ruling in our high court. Although the issue centred on the question of an extension of the time granted to file judicial review proceedings, I found the reasoning of the court to be particularly helpful on the question before me.

[33] In the case of **Antigua and Barbuda Fisherman Cooperative Society v The Financial Services Regulatory Commission et al**²² the claimant was granted leave to file judicial review on the condition that the fixed date claim ought to be filed within 14 days of the grant of leave to do so. The fixed date claim form was filed outside of the 14 day period. The defendants applied for the same to be struck out. The claimants thereafter made an application seeking an order that time be extended and that the fixed date claim form be deemed to be properly filed and served. The claimant argued that the claim was filed late due to the unavoidable absence of counsel who was obligated to travel overseas on business of the State. The claimant relied on CPR 26.4(2), 26.9(3) and 1.1 to make the point that the court was authorised to extend time and to deem what was done to be properly done. In refusing the application, Henry J made a number of observations including the following which is of interest to this ruling –

“...there is no authority under the provisions of the CPR relied upon by the claimant to extend the time limit set out in Part 56.4(11). In the court’s view the provisions in Part 26 referred to by the claimant are general provisions which are inapplicable to the provision for leave and specifically to extension of time fixed in 56.4(11). **Once the claim is filed, Rule 56.11 indicates that the provisions of Parts 25 to 27 apply to directions to be**

²¹ SLUHCVP2008/037 at paras. 32-24

²² Claim No: ANUHCVP2016/0167

given by the Judge at the first hearing. Without a similar express provision, the general provisions for extension of time cannot be applied to Rule 56.4(11)." (Bold emphasis added)

[34] I agree with Henry J's reasoning. It seems to me that if CPR 56 is itself a self-containing code on the commencement and prosecution of administrative claims, then it is to CPR 56 that this court must first have recourse for the disposal of the present debate. CPR 56. 11 and 13 sets out the ambit within which the court's case management powers should be exercised for the trial of a judicial review claim. There is no power in CPR 56 and in particular CPR 56.11 for the court to apply CPR 19. On this score therefore GLA is correct and the court must have recourse to CPR 56.11 and 56.13 to determine whether the applicants ought to be joined and if so, the extent to which they ought to be joined.

[35] Counsel for the GLA reminds the court that the present proceedings concern the process by which the Planning Authority arrived at its decision to grant permission to the applicants to construct their properties. I agree with counsel on this score. It is beyond trite that judicial review proceedings touch and concern the decision making process and it is for the decision maker to be brought to court to explain the process by which it arrived at its decision. The following extract from Halsbury Laws of England is a compendious exposition of the issue –

"Judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but with ensuring that the bodies exercising public functions observe the substantive principles of public law and that the decision-making process itself is lawful. It is thus different from an ordinary appeal. The purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected: it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. This remains so even where the court can say that it is in as good a position as the original decision-maker to determine whether the relevant test is met. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power. The duty of the court is to confine itself to the question of legality. Its concern is with whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers."²³

²³ Halsbury's Laws of England/Judicial Review (Volume 61A (2018))

- [36] But that is not the end of matters. As the Court of Appeal sufficiently elucidated in **Richard Frederick**, the deliberate enactment in CPR 56.11 is designed to ensure “***the widest possible public participation, where warranted, in a matter involving public law considerations...***” The logic for the rule could not be more eloquently stated. The rule gives the court the discretion to decide whether and the extent to which persons other than the applicant to the judicial review and the decision maker may participate in the proceedings. As was said by the Court of Appeal in **Treasure Bay Limited**, where in particular, the judicial review claim seeks orders that may have a direct impact on the interests of the applicant to be joined, it may be inimical to natural justice for a court to refuse to allow that applicant to participate in the proceedings.
- [37] One cannot gainsay that the judicial review claim herein has a direct connection to the substantial interests of the applicants and that its outcome may have more than a tangential impact on their interests. Shortly stated, the GLA seeks orders of this court to examine the process by which the Planning Authority arrived at its decision to grant development permission to the applicants and among other things, to quash those decisions. The various affidavits and the evidence of the applicants attached to their applications and discussed above demonstrate to me that not only substantial financial investments have been made further to the approvals from the Planning Authority but also significant progress has advanced on actual construction further to those financial outlays. There is no stretch in logic therefore to conclude that if for instance, quashing orders are granted as prayed by GLA, the applicants will be more than severely hampered in their interests. In that regard, they have demonstrated to this court that they have a sufficient interest in these proceedings. These circumstances warrant and natural justice certainly dictates that they must be given an opportunity to be heard.
- [38] What then is the extent to which the applicants are to participate in these proceedings? GLA is of the opinion that the applicants may be allowed to make written or oral submissions. The applicants respond that they should be allowed to be joined as interested parties who are permitted to file evidence in addition to written submissions. I find some assistance in the approach adopted by our Court of Appeal in **Treasure Bay Limited** in similar circumstances where the court allowed Cage (St. Lucia) Limited to be joined as an interested party and ordered all previous documents in the proceedings to be served on Cage. Cage was allowed to file evidence and the other parties were given an opportunity to respond. The foregoing approach was also adopted by the high court in Saint Vincent in **Lavaggi v The Physical Planning and**

Development Board where the court allowed Wireless Ventures to be joined as an interested party and ordered all previous documents in the proceedings to be served on Wireless Ventures.

[39] I am minded to adopt the same approach in this case. For one thing I do not see CPR 56.11(2) (a) as being circumscribed by CPR 56.11(2) (b) in the manner relied on by GLA. CPR 56.11(2)(a) gives the court the discretion to hear anyone who has a sufficient interest. In that regard the rule itself does not delineate the manner in which the court is to exercise this discretion. CPR 56.11(2)(b) further gives the court the discretion to allow the person who has sufficient interest to make either oral or written submissions. Again, the rule does not mandate that this is the only manner in which the discretion to be heard must be exercised. Indeed the rule says the court “may” so proceed. I think that it is proper to so interpret this rule. If the court is to be allowed the power to permit the widest possible participation where warranted, there seems considerable wisdom in the rule permitting the court the latitude or more properly put, the discretion to craft the manner in which and the extent to which the interested party is to participate as may be necessary in all the circumstances. In this case for instance, there is substantial evidence of some engagement between the applicants, in particular, Range and GLA. Restricting Range to merely making written submissions may not allow Range to fully ventilate the concerns regarding the impact on their interests. Natural justice interests as I have found in this case will not be vindicated by restricting Range or Hartman to ventilating their concerns via evidence brought by the Planning Authority or if the Planning Authority chooses to call them as witnesses on its behalf.

[40] The applicants are therefore joined as interested parties. The claim is to be amended to reflect the same. I had previously, on 24th June 2021 allowed Heng Sheng’s application to be joined as an interested party. The claim must also be amended to reflect that fact. GLA is to serve the applicants and Heng Sheng with its amended claim and all previously filed documents within 21 days of this ruling. The Planning Authority is to serve the applicants and Heng Sheng with its previously filed documents within 21 days of this order. I had ordered on 24th June 2021 that Heng Sheng would be allowed to present affidavit evidence with the court’s permission. On this order, I am also permitting the applicants to file and serve affidavit evidence. The applicants and Heng Sheng may file and serve documents and any applications within 14 days of service on them of the GLA’s and the Planning Authority’s documents. GLA and the Planning Authority may respond within 14 days of service of the documents from the applicants and Heng Sheng. The court will hear the strike out application filed by the Planning Authority on 19th November 2021. A further case management conference will take place on 3rd December 2021.

Grenada Land Actors' costs application pursuant to CPR 26.1(2) (u)

- [41] Counsel for the GLA states that in light of the obvious inequality of arms in responding to the joinder application, the court should order Hartman Group, Range and Heng Sheng to pay all the costs occasioned by GLA on the joinder application. Further, counsel explains that this matter is of public concern. GLA is a not-for-profit organisation incorporated in January 2021 which sought funding by public petition to finance these proceedings. Additionally, counsel highlights the great difficulty GLA encountered in its efforts to find legal representation. GLA's financial state can be contrasted, counsel argues, with the value of the Hartman Group and Range projects which value can be readily inferred from the evidence before the court.
- [42] Counsel surmises that the court has sufficient material before it to make such an order without the need for GLA to incur further costs of making written application. Further, under the rules and its inherent jurisdiction the court has the power to ensure that a deserving litigant is not driven from the judgment seat because of inequality of arms, particularly in public matters. Counsel relies on the decision of the Ontario Superior Court of Justice in **Fontaine v Canada (Attorney General)**²⁴ where the court ordered the government to pay advance costs to the litigant to enable her to pursue her case against it.

Range's response

- [43] With respect to the issue of costs under CPR 26.1(2) (u), Range's response is that this provision must be narrowly construed, especially where there are allegations being made that GLA is a mere busybody and that the claim is frivolous and vexatious. It would be absurd to consider that this provision allows a court to make an order for one party to fund the litigation of an opposite party. Counsel explains that in any event, there is no proof that there is substantial inequality between the parties. The court must not give any undue weight to the fact that the GLA is a non-profit organisation. Therefore, Range's position is that the application for costs is baseless.

²⁴ 2016 ONSC 7007

Hartman Groups' response

- [44] In relation to the issue of costs, counsel for Hartman Group notes that at the hearing on 24th June 2021, counsel for the GLA submitted that if the Hartman Group is permitted to intervene the court should order it to pay any costs suffered by them as a result of its intervention. Counsel for Hartman Group submits that there is insufficient evidence indicating GLA's financial position. Therefore, the court is in no position to determine whether there is a substantial inequality which would warrant an order under CPR 26.1(2) (u). Further, given the court's order for the claim to be migrated to the E-Portal, any additional costs should be nominal.
- [45] I note GLA's statements that it is a non-profit organisation which funded its litigation by way of public petition and has experienced difficulty in obtaining legal representation as a result. Aside from this assertion, GLA has not provided the court with evidence from which the court can form an assessment of GLA's funding of or its financial resources in order to make any determination on its financial status or its ability to fund the litigation that it has initiated. With respect to counsel for GLA's argument that the court should assess the value of the Hartman and Range projects based on the evidence before it, I am not satisfied that such an inference or assessment is permissible at this stage or even if permissible, that it would take matters further in light of the absence of evidence of GLA's financial resources. I note that much of GLA's costs ought to be offset by the migration of this claim to the court's e-litigation portal and the generous undertaking of the Attorney General to facilitate the same.
- [46] In all the circumstances, I refuse the application on costs and order the parties to each bear their own costs.

Conclusion

- [47] For the foregoing reasons, I order as follows:
- (1) Hartman Group Limited and Range Developments (Grenada) Limited are joined as interested parties in the judicial review proceedings.
 - (2) The Grenada Land Actors Inc. shall file an amended claim form to reflect the joinder of all the interested parties. Grenada Land Actors is to serve the amended claim form, affidavits in support and all other documents that it previously filed in the proceedings on Heng Sheng,

Hartman Group and Range Developments (Grenada) Limited within 21 days of this judgment.

- (3) The Planning and Development Authority shall serve all of its documents previously filed in the proceedings on Heng Sheng, Hartman Group and Range Developments (Grenada) Limited within 21 days of this judgment;
- (4) Heng Sheng, Hartman Group and Range are permitted to file and serve any documents in response and/or applications that they wish to file within 14 days of being served with the GLA and Planning Authority's documents;
- (5) GLA and the Planning Authority may respond to the documents and/or applications filed and served Heng Sheng, Hartman Group and Range within 14 days of the receipt of the same;
- (6) The strike out application will be heard on 19th November 2021;
- (7) A further case management will take place on 3rd December 2021;
- (8) Each party is to bear its own costs on this application.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar