

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

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

CLAIM NO. ANUHCV 2016/0289

BETWEEN:

**MACKENZIE FRANK
TREVOR WALKER**

Claimants

and

**THE ATTORNEY GENERAL
PARADISE FOUND LLC**

Defendants

APPEARANCES:

Mr. Ralph A. Francis for the Claimants
Mrs. Carla Brookes-Harris for the First Defendant
Ms. E. Ann Henry for the Second Defendant

2018: February 19th

JUDGMENT

[1] **WILKINSON J.:** On 6th June 2016, Mr. Frank and Mr. Walker filed their claim form supported by a joint affidavit. Mr. Frank and Mr. Walker by their claim form pleaded that they would move the Court for an administrative order being an application for declarations and relief pursuant to section 18 of **The Constitution of Antigua and Barbuda** (“the **Constitution**”) and they claimed:

- said
- (i) A declaration that the Government of Antigua and Barbuda has compulsorily acquired and taken possession of the property specified in Schedule 1 of the **Paradise Found (Project) Act, 2015** by securing the enactment of the **Paradise Found (Project) Act, 2015**.
 - (ii) A declaration that the Government of Antigua and Barbuda did not acquire the property for public use.
 - (iii) A declaration that section 3 of **Paradise Found (Project) Act, 2015**, and the sections of the Act which are dependent on section 3 violate section 9 of the **Constitution** and are therefore void and of no effect.
 - (iv) An order striking down the **Paradise Found (Project) Act, 2015**, as being inconsistent with the **Constitution** and therefore void by virtue of section 2 thereof.
 - (v) Further and in the alternative, if which is denied, the Government of Antigua and Barbuda has acquired and taken possession of the property specified in Schedule 1 of the **Paradise Found (Project) Act, 2015** for the public good, determination of the amount of compensation to which the people of Barbuda (including Mr. Frank and Mr. Walker) are entitled.
 - (vi) Payment of compensation within a reasonable time.
 - (vii) Vindictory damages.
 - (viii) Discretionary interest pursuant to section 27 of the **Eastern Caribbean Supreme Court Act Cap. 143**.
 - (ix) Such further and other relief as the Court may deem fit.
 - (x) The costs of this claim.

[2] At this juncture it is convenient to record that Paradise Found LLC had filed an application on 15th September 2016, seeking an order to strike out the claim against it. At the end of hearing the Attorney General’s application which was filed first in time, Paradise Found LLC’s application

came on for hearing, Mr. Frank and Mr. Walker did not resist the application and there was only the matter of costs to be settled between the Parties. Paradise Found LLC is therefore no longer a party in these proceedings.

[3] On 13th September 2016, the Attorney General filed an application seeking an order that the claim be dismissed because it disclosed no cause of action against the Government under the **Constitution** and or was an abuse of process. It was supported by his affidavit. The grounds of the application were:

- (i) By claim form filed at the court office on 6th June 2016, Mr. Frank and Mr. Walker have alleged that the Government compulsorily acquired the property identified in Schedule 1 of the **Paradise Found (Project) Act, 2015** contrary to section 9 of the **Constitution**, and have claimed declarations and compensation including vindictory damages.
- (ii) The claim ought to be dismissed for the following reasons:

The Paradise Found (Project) Act, 2015

- ii.i Does not acquire or purport to acquire any property rights or interests of Mr. Frank and Mr. Walker or any other Barbudan as alleged or at all; and
- ii.ii Gives legal force and effect to a lease arrangement with the Crown which is in the public interest of the State of Antigua and Barbuda, and more specifically the people of Barbuda. The title to the property remains vested in the Crown;
- (iii) Mr. Frank and Mr. Walker have not pleaded or shown any legal or other right or interest to the property whether conferred by the **Barbuda Land Act, 2007** or otherwise which was allegedly acquired by the Government of Antigua and Barbuda by the **Paradise Found (Project) Act, 2015**;
- iii.i The **Paradise Found (Project) Act, 2015** does not and did not acquire any legal or other right or interest owned or held by Mr. Frank and Mr. Walker or any other person in Barbuda;

iii.ii Alternatively, and on the assumption the Government of Antigua and Barbuda acquired any lands or interest in lands by the enactment of the **Paradise Found (Project) Act, 2015**, which is denied, the Attorney General relies on the following:

- i. The Attorney-General repeats paragraphs ii.i to iii.i above;
- ii. The Constitution does not permit representative constitutional claims;
- iii. The acquisition of land, if an acquisition occurred at all, which is denied, is in the public interest (the development and promotion of tourism, the generation of employment in Barbuda); and
- iv. The **Land Acquisition Act** provides the remedy of compensation provided by law and the **Constitution**.
- v. The claim discloses no cause of action and/ or is an abuse of the process of the Court.

[4] The Attorney General, Mr. Steadroy C. Benjamin in his affidavit deposed that he had read the claim and joint affidavit of Mr. Frank and Mr. Walker. He was advised by Senior Counsel whom he believed, that Mr. Frank and Mr. Walker's claim had disclosed no cause of action under or in relation to the **Constitution** against the Government. He had also read the application filed on his behalf and he believed the grounds of the application were true and relied on those grounds in the making of his application. He further deposed that he verily believed that the **Paradise Found (Project) Act, 2015** was in the public interest of Antigua and Barbuda and the Government's policy of developing high end tourism, creating employment and expanding the economy of Antigua and Barbuda. Further, according to him the **Act** did not contravene the provisions of section 9 of the **Constitution**. He therefore prayed that the Court grant the relief sought.

[5] As it relates to Mr. Frank and Mr. Walker's affidavit, once again the Court draws to the Parties attention **CPR 2000** rule 30.3 on the contents of affidavits. Affidavits are only to contain facts as deponents are able to prove from their own knowledge and with statements of information and belief if a particular rule allows. Their affidavit not being for use in an application for summary judgment or a procedural or interlocutory application, it does not qualify for additional allowances. The continued practice of citing legislation and rendering opinion on the legislation in affidavits is an abuse of process.

[6] The issue of control and ownership of land at Barbuda has been a contentious one for some time. In **Civil Appeal No. 7 of 2001 The Attorney General v. The Barbuda Council** a decision once again concerning the lease of land at Barbuda by the Government, Bryon C.J recorded 3 other suits on the issue of control and ownership – **HC68/1998 Unicorn Ltd. v. The Barbuda Council, HCV456/1994 The Barbuda Council v. The Attorney General, Antigua Aggregates Ltd and Sandco Ltd.** and **Civil Appeal No.1 of 1999 Hilbourne Frank v. The Attorney General.**

[7] Mr. Frank and Mr. Walker were both born at Barbuda and are both of Codrington Village in the Parish of Holy Trinity, Barbuda. Mr. Frank and Mr. Walker provided the Court with an account of some of Barbuda's history and in particular the political matters affecting self-governance of Barbuda and the matter of control and ownership of the land at Barbuda.

[8] Byron C.J. in **Civil Appeal No. 7 of 2001 The Attorney General v. The Barbuda Council** set out a very detailed and helpful historical context of control and ownership of the land up to the date of his judgment at 27th May 2002.

[9] Reverting to Mr. Frank and Mr. Walker, Mr. Frank deposed that from 1991 to 2002, he served as secretary to the Barbuda Council. From 2004 to 2014, he was a member of the Senate where he served as a Senator representing the people of Barbuda. From 2005 until 2014 he was the Vice President of the Senate and from 2009 to 2013, he sat as an ex officio member of the Barbuda Council.

[10] Mr. Walker was a Member of Parliament for Barbuda from 2004 to 2014, and Minister for Barbuda from 2004 to 2007. From 2007 to 2009 he was Minister of State of Public Utilities in the Prime Minister's Office. From 2009 to 2014 he was Minister of Public Works and Transportation.

[11] According to Mr. Frank, in July 2000, following years of conflict between the Antiguan Labour Party government, the Barbuda Council and the people of Barbuda, the Commonwealth Secretariat dispatched a team to review the relationship between the Central Government and the Barbuda Council. The team found that there was a consensus that the system of land tenure should be retained and that major development projects should not be carried out in Barbuda without the consent of the people of Barbuda.

[12] In 2004 the United Progressive Party was elected to govern the State of Antigua and Barbuda and three (3) years later **The Barbuda Land Act 2007** was passed to settle the issue of land ownership, the administration and development control of land in Barbuda.

[13] Following separate elections in 2013 and 2014, both the Barbuda Council and the Government came under the control of the Antigua Labour Party. Since then, the question of land, its control, future ownership and the issue of the consent of the people of Barbuda once again became contentious issues.

[14] According to Mr. Frank and Mr. Walker, on 3rd November, 2014 the Government entered into an agreement with Paradise Found LLC for a tourism development project in Barbuda. The Government agreed to lease Paradise Found LLC 555 acres on Barbuda for 198 years¹ at a total cost of US\$ 6.2 million. There was also proposed an eco-lodge project for 250 acres and an airport for 500 acres. At 30th December 2015, the **Paradise Found (Project) Act, 2015** was assented to by the Governor General.

[15] Mr. Frank and Mr. Walker exhibited to their affidavit a schedule entitled “Registered Voters in the Constituency of Barbuda in Support of Application for Administrative Order April 2016”. 120 names were listed, 12 of the names did not bear any signature next to their name. Mr. Frank and Mr. Walker deposed that signatories to the document had the same interest as them in the suit and they proposed to seek an order pursuant to **CPR 2000** rule 21.1 after the claim was filed appointing them to represent the persons who had signed off the document.

The Law

[16] While the application has not identified which rule it is being made pursuant to in **CPR 2000**, it appears to the Court that it is being brought pursuant to rule 26.3(1) (b) and (c). Rule 26.3(1) (b) and (c) provide:

“26.3(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

¹ The Paradise Found (Project) Act, 2015 states 99 years with option for a further 50 years.

(a)...

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

(c) the statement of case or the part to be struck out is an abuse of process of the court or is likely to obstruct the just disposal of the proceedings;

[17] As to how the Court ought to proceed on an application to strike out a claim pursuant to rule 26.3(1), the Court is guided by Rawlins JA in **Caribe (Realties) Canada Limited/Immeubles Caribe Ltee et al v. Wycliffe Baird**.² There His Lordship said:

“[12] ...rule 26.3(1) (b) of CPR 2000 provides a summary procedure under which striking out should only be done in cases in which there is a total absence of a proper cause of action.

[13] The learned Master correctly stated the principle on which a court would dismiss a claim against a defendant because it discloses no or no reasonable cause of action against them. She extracted it from the statement of Sir Denis Byron, CJ, in the case of **Baldwin Spencer v. The Attorney General of Antigua and Barbuda et al**³ where it was stated that this summary procedure should only be used in clear and obvious cases, when it can be clearly seen on the facts of the statement of claim that it is obviously unsustainable or is in some other way an abuse of the process of the court.

[14] The Master rationalized and explained the principle. She stated that the court has to caution itself against conducting a preliminary trial of a case without discovery, oral examination, or cross-examination. This, she stated, the court must balance against giving effect to the overriding objective of the Rules which is to deal with cases justly by ensuring the most efficient use of the resources of the court and to save the parties unnecessary expense, through the case management process, by preventing a claimant who does not have a reasonable sustainable case from proceeding to trial.”

² St. Christopher & Nevis Civil Appeal No.10/2005.

³ Antigua & Barbuda Civil Appeal No.20A of 1997.

[18] In the later case of **Citco Global Custody NV v. Y2K Finance Inc.**⁴ Edwards JA once again set out the principles governing an application made pursuant to rule 26.3 (1) (b). She said:

“[12] Striking out under the English CPR, r 3.4 (2) (a) which is the equivalent of our CPR 3(1) (b), is appropriate in the following instances: where the claim sets out no facts indicating what the claim is about or if it is incoherent and makes no sense, or if the facts it states, even if true, do not disclose a legally recognizable claim against the defendant.

[13] On hearing an application made pursuant to CPR 26.3(1) (b) the trial judge should assume that the facts alleged in the statement of case are true. “Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inference from those facts. Such conclusions or inferences may require to be subjected to closer scrutiny.”

[14] Among the governing principles stated in **Blackstone’s Civil Practice 2009** the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as request for information, and the examination and cross-examination of witnesses often change the complexion of a case. Also, before using CPR 26.3 (1) to dispose of “side issues”, care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in every application must be exercised in accordance with the overriding objective of dealing with cases justly.”

[19] There is no denying that the **Constitution** provides all citizens at section 3 with fundamental rights and which include the enjoyment of property and the protection of that property against deprivation without fair compensation. The fundamental rights are subject nevertheless to such limitations of

⁴ Territory of the Virgin Islands HCVAP 2008/022.

that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. By section 9 no property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time.

[20] There is day to day governance at Barbuda by a local Council established pursuant to **The Barbuda Local Government Act Cap. 44** as amended by **The Barbuda Land Act, 2007**. Section 3(1) provides for the establishment of a Council for Barbuda and which is to administer the system of local Government for Barbuda. Section 3(3) of the Act states that Barbuda shall be subject to the jurisdiction of the Council which is vested with the powers set out in the Act. Section 18 provides the functions, powers and duties of the Council. These include addressing matters of agriculture, forestry, public health, medical and sanitary facilities and services, water, electricity, and other utilities, constructing and maintaining roads, raising and collecting revenue to meet the expenses of the Council's functions. Added to this section 18 by **The Barbuda Land Act, 2007** was (f) to administer land in Barbuda including the development of land as set out in **The Barbuda Land Act, 2007**. Section 29(2) was amended to read that all land held for public purposes shall be held by the Barbuda Council under **The Barbuda Land Act, 2007**, and that all other land belonging to the Barbuda Council shall be vested in the Barbuda Council.

[21] The central Act for consideration the Court believes is **The Barbuda Land Act, 2007**. It is from here that Mr. Frank and Mr. Walker say that they derive locus standi to file their claim.

[22] The long title of the Act reads '**AN ACT to confirm that all land in Barbuda is owned in common by the people of Barbuda, to provide for the administration and development control of land in Barbuda, to provide for the confirmation or otherwise of certain leases of land in Barbuda, and for incidental and connected purposes.'** (My emphasis)

[23] Other relevant sections of the Act for the Court's consideration are:

2. Interpretation

In this Act, unless the context otherwise requires

"Barbudan" means

- (a) a person born in Barbuda of whose grandparents at least one was born in Barbuda; or
- (b) the child, wherever born, of parents at least one of whom is a Barbudan within the meaning of paragraph (a).

"Council" means the Barbuda Council;

"land" includes an interest in land;

....

"the people of Barbuda" means all Barbudans.

3. Barbuda land is owned in common by Barbudans

(1) All land in Barbuda shall be owned in common by the people of Barbuda.

(2) Subject to sections 4 and 20, the title to all land in Barbuda shall vest in the Crown on behalf of the people of Barbuda.

4.

5. No sale or prescription

(1) No land in Barbuda shall be sold.

(2) No person shall acquire the ownership of any land by prescription or otherwise.

6. Leases of land for major developments

(1) The Council, with the approval and on the advice of Cabinet and having obtained the consent of a majority of the people of Barbuda, may grant leases of land for major developments in accordance with this section and Part VI.

(2) A person proposing to develop land in Barbuda shall apply to the Council in accordance with the regulations and pay the application fee set out in the regulations.

(3) Before the Council grants a lease under subsection (1) it shall obtain the consent of a majority of the people of Barbuda.

maximum
accordance (4) The Council may grant a lease of land in Barbuda for a major development for a period of 50 years, or any longer period that the Council may, by regulation fix in with this Act.

(5)

11. Administration and development of land

(I) The Council shall have the responsibility and duty for-

(a) the administration of land in Barbuda.

(b) the development of land in Barbuda.

(c) the granting of lease in Barbuda,

(2)

16. Development plan

....

17. Major developments

Cabinet
Part. (1) Major developments in Barbuda shall not take place without the agreement of the and the Council and the consent of the people of Barbuda in accordance with this

(2) The procedure for considering whether consent should be given to major development proposals for Barbuda shall be that:

(a) firstly, the Council shall obtain the consent of the people of Barbuda to the principle of the proposal;

(b) secondly, the proposal shall be considered and approved in detail by the Council;

(c) thirdly, if the proposal is approved in detail by the Council the proposal shall be considered by the Cabinet;

(d) fourthly, if the Cabinet agrees to the proposal, the Council shall then obtain the consent of the people of Barbuda.

tax (3) The Council, with the consent of the Cabinet, shall have power to raise and collect a on major developments in Barbuda in accordance with regulations made by the Minister after consulting the Council.

18. Obtaining the consent of the people of Barbuda

their (1) The Council shall be responsible for consulting the people of Barbuda and obtaining consent under this Act either by a meeting of the people of Barbuda or by a vote of the people of Barbuda.

the (2) The Council shall make regulations to provide for the manner in which the consent of people of Barbuda under this Act is obtained.

(3) ...

(2) Consent to a proposed major development shall be signified by a majority of persons present at a meeting or by a majority of persons voting on a ballot.

23. Assignment of leases

Leases of land in Barbuda may only be assigned or sublet with the approval of the Council except in the case of leases for major development where the approval of the Cabinet shall also be obtained.

30. The Crown

This Act shall bind the Crown.

31. Entrenchment

(1)

shall (2) Until the Constitution is amended in accordance with subsection (1) no amendment be made to this Act without the consent given by the Council and the people of Barbuda."

(My emphasis)

[24] The lease in contention has been set out in the **Paradise Found (Project) Act, 2015**. By its long

for title it states that it is an ACT to provide for the approval of specified terms of an agreement dated 3rd November 2014, between the Government of Antigua and Barbuda and Paradise Found LLC a tourism development Project in Barbuda. It was to be brought into operation on a date appointed by the Minister of Finance. At section 2, the interpretation of “Leased Land” is:

“Leased Land” means those parcels of land situate in Barbuda leased to Paradise Found LLC or its subsidiaries or affiliates for the Project more particularly described in Schedule 1 and includes all lands in Barbuda that may be leased to Paradise Found LLC in the future for purposes of the Project.”

[25] The term of the lease according to the Second Schedule of the Act is 99 years with an option for a further 50 years. The Project is described as meaning tourism and real estate development on Barbuda by Paradise Found LLC.

[26] As to how this lease would have been impacted by **The Barbuda Land Act, 2007**, there are a number of provisions which all create exceptions and so “side-step” or circumvent **The Barbuda Land Act, 2007**. Those provisions are:

3. Grant of leases

(1) Notwithstanding the provisions of the Barbuda Land Act, 2007, No. 23 of 2007 or any other law to the contrary, the Government leases to Paradise Found the Leased Land on the terms set out in Schedule 2.

(2) The Rent shall be prepayment and discharge of all Lessee’s financial obligations under the Lease, including rental for the first 99 years of the term.

(3) The provisions of the Barbuda Land Act, 2007 does not apply to the lease of the Leased Land pursuant to this Act.

4. Non-application of section 6 of Act No. 23 of 2007

majority Section 6 of the Barbuda Land Act, 2007 (which provides that the Barbuda Council may grant leases with the approval and on the advice of the Cabinet and the consent of a of the people of Barbuda) does not apply to the lease of the Leased Land pursuant

to this Act; nor does the restriction of the term of the lease apply.

5. Non-application of section 17 of Act No. 23 of 2007

Section 17 of the Barbuda Land Act, 2007 shall not apply to the lease of the Leased Land by virtue of this Act; consequentially the procedure set out in that section is not applicable to the grant of the lease of the Leased Land under this Act.

6. Non-application of section 19 of Act No. 23. of 2007

Section 19 of the Barbuda Land Act, 2007 (time limits on development) shall not apply to the grant of lease of the Leased Land under this Act.

7. Registration of Leases

Notwithstanding the Barbuda Land Act, 2007, the lease of the Leased Land and subleases therefrom shall be registered as deeds under the Registration and Records Act [Cap 375] and no further filing or registration is necessary.

[27] As to interpretation of the various Acts referred, in **Legislative Drafting**⁵ the author, G.C. Thornton states:
“Every Act begins with a long title the function of which is to indicate the general purposes of the Act. The long title is part of the Act, being considered, enacted, and subject to amendment, by the legislature. It is important because it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope.

.....

Apart from parliamentary considerations, a comprehensive long title may serve a valuable purpose in assisting to communicate the intended spirit and scope of the Act.”

[28] For further assistance on the first principles of interpretation of the Acts under consideration, the Court could do no better than to adopt Byron CJ in **Civil Appeal No. 7 of 2001 The Attorney General v. The Barbuda Council** where he said:

⁵ 4th edition p.193,194

the “[10] I would adopt the expression of the principle stated by Sir Vincent Floissac, C.J. in Dominica case of **Charles Savarin v. John Williams** Civil Appeal 3 of 1995:

primary ‘In order to resolve the fundamental issue in this appeal, I start with the basic principle that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. That legislative intention is an inference drawn from the meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the statutory context. In this regard, the statutory context comprises every other word or phrase used in the statute, all implications therefore and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention.

statutory [11] The Mischief Rule, when properly applied, involves the use of an aspect of the context to indicate the statutory intention. It is of ancient vintage. It was succinctly explained by Lindley M.R. in the case of **Bartlette v. Mayfair Property Company** [1898] 2 Ch.28 at 35:

Lord “In order properly to interpret any statute it is as necessary now as it was when Cooke reported Heydon’s Case to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief. “

subjective [12] The Mischief Rule is an important aid to construction, when there is a lack of clarity, or applied ambiguity in the language in which the statute is expressed. But if the words of the statute are clear and unambiguous there is a real danger that in applying the mischief rule perceptions on the mischief and the remedy may influence the interpretation to be by substituting a perceived remedy for the meaning which the legislature intended. A properly drafted statute is capable of conveying its meaning through the actual words used in the statue. It is obvious that in many cases the perception of the mischief, the relevant historical context and what constitutes a desirable solution or remedy is capable of wide variance. And this case was no exception to that concept.” (My emphasis)

[29] A term used in **The Barbuda Land Act, 2007** is “owned in common” by the people of Barbuda.
The **Registered Land Act Cap. 374** section 102 provides assistance with defining and states:

“102. (1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.

other (2) No proprietor in common shall deal with his undivided share in favour of any person than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors on the land, but such consent shall not be unreasonably withheld.” (My emphasis)

[30] The second phrase which the Court believes is at the heart of the claim is at section 3(2) of **The Barbuda Land Act, 2007** and which provides that save for land already committed to leases and public use, the “title to all land in Barbuda shall vest in the Crown on behalf of the people of Barbuda”.

[31] The phrase “title to all land in Barbuda shall vest in the Crown on behalf of the people of Barbuda” appears to in the simplest of ways state that while the land of Barbuda is vested in the Crown, it is not for the Crown’s use or benefit, but rather that the Crown is holding it on behalf of the people of Barbuda and so it could only be used for the benefit of the people of Barbuda.

[32] This vesting arrangement makes perfect sense to the Court given the wide number of persons who presently fall under the definition as Barbudan and who in the future and yet to be born could fall under the definition of Barbudan.

[33] The arrangement proposed by section 3(2) indeed is on all fours with the classic establishment of a trust and whereby the Crown could be said to be in the position of trustee. It is common knowledge that the creation of a trust can be found by looking at the relationship between parties and created whether by behavior, instrument or an Act. **Halsbury’s Laws of England**⁶ provides:

⁶ 4th edition

bound to exercise for or on behalf of another or others, or for the accomplishment of some particular purpose or particular purposes, he is said to hold the property or rights in trust for that other or those others, or for that purpose or those purposes, and he is called a trustee, a trust is purely an equitable obligation....

The trustee holds the property or must exercise his rights of property in a fiduciary capacity, and stands in a fiduciary relationship to the beneficiary.”

The property affected by a trust, called the “trust property” or “trust estate”, must be vested in the trustee, whether the property is a legal estate, a legal right or an equitable interest where the legal title is vested in some other person.”

Findings and analysis

[34] The Court in looking at the language of **The Barbuda Act, The Barbuda Local Government Act, The Barbuda Land Act, 2007** and the **Paradise Found (Project) Act, 2015** does not find any of the language ambiguous and so the Court stays with interpreting the Acts using the plain meaning or literal rule.

[35] Byron CJ findings in **Civil Appeal No. 7 of 2001 The Attorney General v. The Barbuda Council** were stated to be:

that “[81] I would now summarize my answers to the issues raised on this appeal. The law is the Crown as owner of land has the power to grant, including the power to lease, lands on the island of Barbuda. The laws in my view are equally clear that the Council has no role in the transfer of title. There is no requirement in the Barbuda Act, nor the Local Government Act nor in any other Act requiring the Crown to first obtain the consent or approval of the Barbuda Council before exercising its powers to grant any land. The Council had no legal interest in land contained in the grant of the lease to Unicorn. Neither did the Council have any legal or constitutional status in the process of granting an interest in land to anyone. The legislation as I have shown does not preclude the Crown from behaving as a universal and absolute owner and in that capacity granting an interest in land. The evidence indicates that the proper processes required by law were observed and the lease was properly issued by

His Excellency the Governor General. In my view the granting of the lease was not unlawful.”

[36] While the Court was grateful to receive **Civil Appeal No. 7 of 2001 The Attorney General v. The Barbuda Council**, and it was very instructive on the history of Barbuda, on the matters of control and ownership of land at Barbuda, and the analysis of the existing and pertinent legislation up to 2002, brought clarity, the passage of **The Barbuda Land Act, 2007**, which also repealed and or amended sections of **The Barbuda Act** and **The Barbuda Local Government Act** which were under consideration in 2002, changed the entire regime in relation to control and ownership of land at Barbuda. Indeed the new regime is recognized by all the sections in the **Paradise Found (Project) Act, 2015** which seek to “side-step” or circumvent **The Barbuda Land Act, 2007**.

[37] The Court believes that it ought to start with the issue of whether Mr. Frank and Mr. Walker have locus standi to file their claim. They base their claim to challenge the lease to Paradise Found LLC on **The Barbuda Land Act, 2007**. It is not denied that both Mr. Frank and Mr. Walker are Barbudans and fall within the definition of a Barbudan found at section 2 of the **Act**.

[38] This brings us to the second aspect of locus standi, whether they have a claim. **The Barbuda Land Act, 2007**, the long title which can be used to assist in interpreting the Act, states that the Act is to confirm that all the land in Barbuda is “owned in common” by the people of Barbuda. This term “owned in common” is at section 3 of the **Act**.

[39] As to the definition of the term ‘owned in common’, the Court is guided by the definition provided in the **Registered Land Act Cap. 374** section 102 because to do otherwise would certainly lead to uncertainty if 2 **Acts** dealing with a common matter of land within Antigua and Barbuda prescribed different interpretations for the same lot of land held by title as “owners in common”.

[40] The term “owned in common” as interpreted with the assistance of the **Registered Land Act** therefore means that Mr. Frank and Mr. Walker own an undivided share in the land at Barbuda. This of course also means that their undivided share in the land at Barbuda would be captured under the **Constitution**. The Court does not believe that given the nature of the application, that it need say more on such constitutional right at this time.

[41] There is then the matter of where the title of the land at Barbuda vest. Section 3(2) provides that it shall vest in the Crown on behalf of the people of Barbuda. This is simple yet strong language. Nothing ambiguous. The Crown will hold title but it is not for its own benefit or any wider benefit as there is an unqualified caveat or qualifier – it is on the behalf of the people of Barbuda. To the Court, section 3(2) suggest an arrangement not unlike a simple trust with the Crown in the like position of a trustee. It was already explained prior why this arrangement makes sense.

[42] As noted **The Barbuda Land Act, 2007** requires by section 7 that the consent of Barbudans be obtained for any major development. It is not denied nor can it be denied that the proposal of Paradise Found LLC is a major development planned for land at Barbuda.

[43] As the Court noted, there are several sections in the **Paradise Found (Project) Act, 2015** which appear to “side step” or circumvent the requirement for the consent of the people of Barbuda for major development pursuant to **The Barbuda Land Act, 2007**, and so perhaps a question for trial is whether the Crown which is vested with title on behalf of the people of Barbuda, could act without the consent of Barbudans given the tenor of the **Act**.

[44] While there were many grounds set out in the application, the Court bears in mind the caution of Rawlins J.A and Edwards J.A about not conducting a mini trial at this juncture. Some of the matters raised as grounds are best left for trial. The Court does not feel that it is called upon at this juncture to analyze the matter of the lease arrangement between the Government and Paradise Found LLC.

[45] In concluding, the Court finds that by the mere fact that Mr. Frank and Mr. Walker are Barbudans within the definition of **The Barbuda Land Act, 2007** and pursuant to section 3(1) of the said Act they hold some interest under the title of “owned in common” together with all similarly qualified Barbudans in the land at Barbuda, that they have locus standi to file the suit challenging a lease of land at Barbuda and as described in the **Paradise Found (Project) Act, 2015**. The Attorney General’s application is therefore dismissed with costs.

[46] Court’s order:

1. The application is dismissed.

2. Costs to the Claimants in the sum of \$2500.00.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar