

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN
3

Cause No: G 85/2013

4
5 BETWEEN:

MR. RUPERT ACKERMON

APPLICANT



10
11 AND:

- 12 1. GOVERNMENT OF THE CAYMAN
13 ISLANDS
14 2. NATIONAL ROADS AUTHORITY
15

16 RESPONDENTS
17

18
19 Appearances:

Mr. Neil Timms Q.C. instructed by Mr.
Mark Goodman of Campbells for the
Applicant

Ms. Reshma Sharma of the Attorney
General's Chambers on behalf of the
Respondents

Lord Goldsmith Q.C. instructed by Mr.
Mac Imrie of Maples on behalf of Dart
Realty (Cayman) Ltd. ("DRCL"), interested
party

32 Before:

The Hon. Mr. Justice Charles Quin

33 Heard:

24th April 2013

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35 JUDGMENT
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THIS APPLICATION

1. On the 11th March 2013 Mr. Rupert Ackermom (the "Applicant") filed an application for leave to apply for Judicial Review ("JR") pursuant to GCR O.53. The Applicant was seeking leave to judicially review the following decisions and declarations of the First Respondent and the Second Respondent made on or about the 15th December 2011 and on dates unknown:



i. The decision to execute and the execution of an Agreement with Dart Realty (Cayman) Ltd. ("DRCL") dated the 15th December 2011 as amended or varied subsequently on dates unknown (the said Agreement, amendments and variations together referred to as the "Agreement".)

ii. The decisions to make and/or [that] the Public Roads Declarations and other steps of unknown date, purportedly made pursuant to, or in consequence of, the said Agreement to approve, adopt, lay out and maintain as public roads, certain planned rights of way, and to close certain public roads, vesting land in DRCL as therein set out, including:

a) To effect the closure of the West Bay Road and to vest a portion of the same in DRCL;

b) To effect the closure of the Raleigh Quay Road (as referred to in the said Agreement) and to vest a portion of the same in DRCL;

c) To approve the construction of the Esterley Tibbetts Extension ("ETH Extension") (as referred to in the said Agreement).

1 2. The Applicant seeks the following relief:

2 i. A Declaration that the aforesaid decisions and any consequential
3 actions are void, erroneous in law, unconstitutional, unreasonable
4 and/or contrary to the principles of Natural Justice;

5 ii. An Order of *Certiorari* to quash the decision of the Respondents to
6 enter into and/or implement the Agreement, to close the public roads
7 vesting land in DRCL as therein set out and/or to approve, adopt, lay
8 out and maintain as public roads the planned rights of way therein set
9 out and/or to grant certain tax or other concessions to DRCL, its
10 affiliates and assigns as also therein set out;

11 iii. An Order of *Mandamus* requiring the Respondents to keep open and
12 maintain the West Bay Road and those other roads referred to in the
13 Agreement purportedly to be legally closed as public roads.

14 iv. An Order prohibiting the Respondents from implementing the said
15 Agreement or otherwise vesting in DRCL the land referred to in the
16 Agreement or alternatively staying its implementation and such vesting.

17 3. The Applicant's application for leave to apply for JR was grounded by his First
18 Affidavit sworn on the 8th March 2013 which exhibited the Agreement, dated the
19 15th day of December 2011, executed by the Respondents and DRCL.



1 *EX PARTE APPLICATION*

2 4. On the 13th March 2013 Henderson J. delivered a Ruling in this matter as follows:

3 *"I have refused to grant leave on the ex parte application because of what*
4 *seems (on the papers) to be excessive delay on the part of the Applicant. My*
5 *intention is that the Applicant may, if so advised, apply for leave inter partes in*
6 *open Court. The Respondents will then have a full opportunity to address the*
7 *merits plus the issues of delay and standing."*

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9 5. On the 18th March 2013 the Applicant filed his notice of intention to renew his
10 application for JR pursuant to GCR O.53 r.3(5). In support of his renewed
11 application the Applicant filed a Second Affidavit on the 20th March 2013 and a
12 Third Affidavit on the 12th April 2013.

13 6. On the 18th April 2013, DRCL filed its Notice of Intention to Appear and to seek
14 the Court's leave to oppose the said application. On the 23rd April 2013 an Affidavit
15 from Jacqueline Doak ("Mrs. Doak") was filed in support of DRCL's opposition to
16 the Applicant's application.





1 APPLICATION FOR LEAVE

2 7. GCR O.53 r.3(7) reads:

3 "The Court shall not grant leave until it considers that the applicant has a
4 sufficient interest in the matter to which the application relates."

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6 8. As the learned editors of the 1999 Supreme Court Practice state at O.53 r.14
7 paragraph 55:

8 "The purpose of the requirement of leave is (a) to eliminate at an early stage
9 any applications which are frivolous, vexatious or hopeless and (b) to ensure
10 that an applicant is only allowed to proceed to a substantive hearing if the
11 court is satisfied that there is a case fit for further consideration."

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13 9. Lord Diplock stated in the House of Lords case of *R v. Inland Revenue*
14 *Commissioners Ex Parte National Federation of Self-Employed and Small*
15 *Businesses Limited* [1982] A.C. 617 at 642 that the requirement that leave must be
16 obtained is designed to:

17 "... prevent the time of the court being wasted by busybodies with misguided or
18 trivial complaints of administrative error, and to remove the uncertainty in
19 which public officers and authorities might be left as to whether they could
20 safely proceed with administrative action while proceedings for judicial review
21 of it were actually pending even though misconceived."

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23 10. It is common ground amongst all the parties to this application that leave should be
24 granted if on the material available before the Court the Court considers, without
25 going into the matter in depth, that there is an arguable case for granting the relief
26 claimed by the Applicant.



1 11. GCR O.53 r.4(1) reads:

2 *"An application for leave to apply for judicial review shall be made promptly*
3 *and in any event within 3 months from the date when grounds for the*
4 *application when first arose unless the Court considers that there is good*
5 *reason for extending the period within which the application shall be made."*

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7 12. As the learned editors of the Supreme Court Practice state at O.53 r.14 paragraph
8 58:

9 *"It is sometimes thought that an applicant for judicial review is always allowed*
10 *three months in which to make his application for leave, and provided that he*
11 *lodges it within that period leave cannot be refused on the grounds of delay.*
12 *That is not so. The primary requirement laid down by the rules (r.4(1)) is that*
13 *the application must be made "promptly" followed by the secondary provision*
14 *".... and in any event within three months". Thus there can be cases where,*
15 *even though the application for leave was made within three-month period,*
16 *leave might be refused because, on the facts, the application had not been made*
17 *promptly."*

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19 13. On the other hand, the Court has the power to extend the time for applying for leave
20 to move for judicial review, but only if it considers that there is "good reason" for
21 doing so as set out GCR O.53 r.4(1).

22 14. Section 31(6) of the Senior Courts Act 1981 of England which applies in the
23 Cayman Islands by virtue of s.11 of the Grand Court Law (2008 Revision) provides
24 as follows:

25 *"Where the High Court considers that there has been undue delay in making an*
26 *application for judicial review, the court may refuse to grant – (a) leave for the*
27 *making of the application; or (b) any relief sought on the application, if it*
28 *considers that the granting of the relief sought would be likely to cause*
29 *substantial hardship to, or substantially prejudice the rights of, any person, or*
30 *would be detrimental to good administration."*

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1 15. Leading counsel on behalf the Applicant, Mr. Neil Timms Q.C., ("Mr. Timms")
2 concedes that when an application for leave is made after three months from when
3 the grounds for the application first arose, the applicant must show good reason
4 why this time period to seek leave should be extended. Mr. Timms submits that the
5 Applicant explains the history and also submits that the Agreement we have seen
6 must be part of a series of agreements, amendments and variations, some of which
7 have been quite recent.

8 16. Leading counsel on behalf of the Applicant submits that the Applicant does not
9 concede that the three month limit must commence when he had sight of the
10 Agreement on the 12th July 2012. The Applicant submits that the decisions
11 challenged are a continuum and it is the final product that the Court must consider.

12 17. Leading counsel for the Applicant also submits that, if the Court considers that the
13 time runs from the disclosure of the Agreement, the Applicant must seek an
14 extension of time. The Applicant concedes that this must be on notice and the Court
15 will wish to consider whether such extension, if granted, would cause substantial
16 hardship or prejudice to the instant parties and also to the wider public, or, if it is
17 detrimental to good administration.





CHRONOLOGY OF EVENTS

18. What is of great importance in this case is the exact chronology of events. Accordingly, I now set out and review the relevant chronology which I have drawn from the three affidavits of the Applicant, the affidavit of Mrs. Doak, and the chronologies provided by both leading counsel for the Applicant and for DRCL. I am pleased to record that most, if not all, of the following chronology is common ground.

DATE	DESCRIPTION KEY: <i>Truly 4 Cayman – T4C;</i> <i>West Bay Action Committee – WBAC;</i> <i>Concerned Citizens Group – CCG;</i> <i>For Cayman Investment Alliance – FCIA;</i> <i>Save Cayman – SC;</i> <i>Esterley Tibbetts Highway – ETH</i> <i>Esterley Tibbetts Highway Extension – ETHE</i> <i>Ministry of District Administration, Works, Land & Agriculture - DAWLA</i>
	The Applicant was initially involved in the WBAC and the aims of the Committee were the prevention of the restriction of access to Seven Mile Beach and the proposed closure of the northern section of the West Bay Road. The T4C incorporates the CCG, the WBAC, the SC group, the <i>Coalition to Keep Bodden Town Dump Free</i> , and, the interests of a broad and significant group of individuals.
2009 onwards	DRCL begins to acquire parcels of land between Governor's Harbour and Batabano Road.
28 th July 2010	DRCL registers its interest in purchasing 72 acres of Crown lands in the area known as Salt Creek.
18 th February 2011	DRCL purchases the Courtyard Marriott Hotel and its site. The Applicant deposes that DRCL also purchased Crown Land on the beach side of the West Bay Road, north of Calico Jack's Bar to Tiki Beach bay, giving DRCL ownership of most of the land on either side of the West Bay Road along a frontage believed to measure approximately 4,290 sq. ft.

April 2011	DRCL closed various public access points from the West Bay Road to Seven Mile Beach on the land it had acquired, causing significant public concern. The Applicant and others considered it a further step by DRCL towards achieving the closure of the West Bay Road.
14 th April 2011	A meeting was called by the CCG to discuss potential actions for redress, because the Applicant and many others were deeply concerned that DRCL would achieve its goal of closure of this section of the West Bay Road and that consequently the rights of access to Seven Mile Beach might be denied to the public.
18 th April 2011	The Applicant confirms that representatives of T4C met with DRCL representatives. Following that meeting, the posts blocking the public access points to Seven Mile Beach were removed.
19 th April 2011	The CCG meets with DRCL to discuss realignment of a section of the West Bay Road.
19 th May 2011	The Applicant confirms that an FOI request was made to the Planning Authority to establish whether there had been any applications to close or move the West Bay Road. No response was ever received to this FOI request.
15 th June 2011	A public meeting was held in West Bay when the First Respondent announced that it had entered into a partnership Agreement with DRCL which involved the proposed closure of a section of the northern end of the West Bay Road, which measured 2,500 ft (the proposed closure of the West Bay runs to 4,290 ft.)
15 th June 2011	Government announced the partnership Agreement with DRCL and the Agreement to facilitate the relocation of part of West Bay Road – confirming that there would be closure of a portion of the West Bay Road but no loss of public access to the beach.
18 th June 2011	Cayman Compass reported “Blockbuster deal made” – disclosing the Heads of Agreement between DRCL and the Respondents leading to the closure of part of the West Bay Road.
14 th July 2011	Demolition of old Courtyard Marriott Hotel.
August 2011	Petition organized by T4C. The Applicant confirms that T4C raised a Petition which collected over 4,116 signatories, all opposing the proposed closure of the West Bay Road.
4 th August 2011	Public meeting in West Bay regarding FCIA projects with DRCL and the proposed closure of West Bay Road, which was attended by the Applicant.



5 th August 2011	DRCL holds first of 12 meetings with residents at Sundowner.
11 th August 2011	Discussions of the proposed closure of the West Bay Road on Rooster FM talk show as well as a public meeting in Bodden Town. Second public meeting held in West Bay.
30 th August 2011	Public meeting regarding FCIA projects held in George Town.
31 st August 2011	Second public meeting regarding <i>FCIA</i> projects, including West Bay Road, held in George Town.
6 th September 2011	The ground breaking ceremony for the <i>ETHE</i> .
15 th September 2011	DRCL holds meeting with residents of Camana Bay
6 th October 2011	DRCL holds meetings with residents of Governor's Harbour.
17 th October 2011	DRCL holds meeting with Harbour Heights representatives.
26 th October 2011	<i>T4C</i> posts graphic on public website indicating a closed portion of West Bay Road.
29 th October 2011	<i>T4C</i> organizes a rally on public beach. The Applicant refers to a copy of the preamble of the Petition for the "Preservation of the West Bay Public Road."
12 th December 2011	Petition against the closure of a portion of the West Bay Public Road presented to His Excellency the Governor, together with a letter from the Chairman of the <i>CCG</i> , in collaboration with the <i>SC</i> group and the <i>WBAC</i> – seeking the preservation of the existing West Bay Road in its entirety in perpetuity, as a public vehicular roadway for the people of the Cayman Islands.
15 th December 2011	The two Respondents signed the Agreement with DRCL
23 rd December 2011	The Caymanian Compass reported an article under the headline " <i>Bush says Petitioners Misled</i> " – confirming that the Agreement to close the section of West Bay Road was signed that week by the two Respondents and DRCL. and stating that the Agreement is still subject to the results of an independent review before it becomes final.
23 rd December 2011	<i>T4C</i> published an open letter to the then Premier, Mr. McKeeva Bush, referring to their Petition to preserve the existing West Bay Road and addressing Mr. Bush's criticisms.





10 th January 2012	The <i>FCIA</i> website was set up and maintained, providing free access to information regarding <i>FCIA</i> projects, including the identification of the portion of West Bay Road to be closed, the works in relation to the West Bay Road itself, and the <i>ETHE</i> .
18 th January 2012	DRCL starts West Bay Road bypass work.
19 th January 2012	The public meeting organized by <i>T4C</i> to raise public awareness about the impact of the Agreement and to protest against it is held.
26 th January 2012	<i>T4C</i> carried out analysis of the 4,116 concerned petitioners, demanding that the Governor preserve the existing West Bay Road in its entirety in perpetuity as a public vehicular roadway for the people of the Cayman Islands.
31 st January 2012	On Rooster FM Cross Talk Mrs. Doak confirmed that the true length of the road closure of the West Bay Road would be 4,290 feet.
16 th February 2012	<i>T4C</i> holds another public meeting to raise public awareness about the impact of the Agreement and to protest against it.
23 rd February 2012	<p>The Applicant deposes that in view of the absence of information and cooperation by the First Respondent, and in view of the concerns regarding the closure of the road, <i>T4C</i> resolved to explore the possibility of pursuing an application for the Judicial Review of the decision by the Respondents to enter into an Agreement with DRCL.</p> <p><i>T4C</i> approached approximately 20 lawyers/law firms to see whether they would be prepared to take on the case, but met with rejections – generally on the grounds of capacity and conflict of interest from all 20 lawyers/law firms.</p>
23 rd February 2012	<i>T4C</i> made a telephone request for a copy of the Agreement dated the 15 th December 2011.
2 nd March 2012	Letter from the <i>CCG</i> , <i>WBAC</i> and <i>SC</i> , confirming that the closure of the West Bay Road would be 4,290 feet and requested a meeting with the then Premier, Mr. McKeever Bush, expanding upon their concerns.
7 th March 2012	Article in the Cayman News Service confirming amendment to Agreement and proposed dual carriageway on the <i>ETH</i> .
8 th March 2012	The Applicant deposes to the fact that at a public meeting in Bodden Town on the 8 th March the former Premier, Mr. Bush, is reported to have said that there was “not a chance” that he would meet with <i>T4C</i> as “they have nothing to bring to the table.”



10 th March 2012	<i>T4C</i> stages a protest rally to raise public awareness about the impact of the Agreement and protest against it.
11 th March 2012	At least 17 members of <i>T4C</i> wrote to the Clerk of the Foreign Affairs Committee, making a formal complaint regarding the closure of a portion of the West Bay Road.
13 th March 2012	The Applicant deposes that it became apparent that funding the application for JR would be a difficulty. The Applicant states that <i>T4C</i> did not have enough information upon which to take advice and it was difficult to find lawyers, and so they came to the view that it was not practicable to pursue a JR at that stage.
26 th March 2012	The <i>CCG</i> , <i>WBAC</i> and <i>SC</i> , wrote to the then Premier, Mr. McKeeva Bush requesting a meeting to discuss their concerns about the proposed closure of 4,290 feet of the West Bay Road.
27 th March 2012	The then Premier wrote to the <i>CCG</i> , <i>WBAC</i> and <i>SC</i> acknowledging their letter and stated that their objections to the road closure were a repetition of what <i>"you and the destructive groups have previously stated and misrepresented on multiple occasions."</i> Mr. Bush said he would hold another public meeting to give factual information.
5 th April 2012	Representatives of <i>T4C</i> met with a group of visiting parliamentarians from the United Kingdom.
12 th April 2012	<i>T4C</i> held another public meeting to raise public awareness about the impact of the Agreement and protest against it.
13 th April 2012	Pursuant to the public meeting of the previous day, the decision by <i>T4C</i> and others not to pursue legal address was revisited and, as the Applicant says: <i>"by then it had become apparent that it was unlikely, given the continuing silence we faced, that we would be able to make progress without legal action."</i>
19 th April 2012	<i>T4C</i> met with Minister Henry Bellingham MP, Foreign & Commonwealth Minister responsible for the Overseas Territories.
19 th May 2012	The Applicant deposes <i>"We had raised enough money and resolved to retain Lord Anthony Gifford Q.C."</i> for legal advice.
Early June	Lord Gifford retained by <i>T4C</i> to provide legal advice.
15 th June 2012	Incorporation of <i>T4C Ltd</i> of which the Applicant had been an active member.

29 th June 2012	The Applicant confirms that Mrs. Terry Caudeiron made an FOI request for a copy of the Agreement.
3 rd July 2012	<i>DAWLA</i> wrote to Mrs. Caudeiron stating that they would not be releasing any of the requested information, as the matter was ongoing and still being negotiated.
July 2012	Representatives of <i>T4C</i> met with Lord Anthony Gifford Q.C. over three days. The Applicant stated that, at that stage, it was not possible for <i>T4C</i> to fully assess whether the Agreement and decisions were lawful, were enforceable as a matter of law, or, were procedurally improper.
12 th July 2012	The Agreement dated the 15 th December 2011 was leaked to MLA, Mr. Ezzard Miller, and disclosed by him to the Cayman News Service.
21 st July 2012	The Applicant and <i>T4C</i> received a legal opinion from Lord Gifford Q.C. confirming that, "there were serious issues the Court should review."
Late July 2012	The Applicant avers that he is aware that Lord Gifford's opinion was leaked to the First Respondent by a member of <i>T4C</i> . The Applicant said that <i>T4C</i> was presented with a serious problem, in that, the confidentiality of their legal advice and the integrity of <i>T4C</i> 's internal process was compromised.
14 th August 2012	The Applicant and <i>T4C</i> were informed that there was a second amendment to the Agreement which had been signed by the Respondents and DRCL and that the completion of the independent review would take a further 4 weeks.
25 th October 2012	The Applicant deposed that it became apparent that <i>T4C</i> would not be able raise sufficient funding to pursue judicial review. The Applicant deposed that " <i>Having discounted legal aid as a viable option at that time, and given the difficulties in raising funding and finding local attorneys, the campaign was closed.</i> "
17 th November 2012	<i>T4C</i> held another protest rally to raise public awareness about the impact of the Agreement and protest against it.
3 rd December 2012	An article was published in the Caymanian Compass in which His Excellency the Governor is quoted as saying that the Framework for Fiscal Responsibility ("FFR") should not hold up the implementation of the Agreement as it was " <i>.... not a procurement process as such you are not in a competitive tendering position because you are looking at some swaps there between what government has and what Dart has.</i> "





9 th January 2013	Ten members of <i>T4C</i> signed a letter to the new Premier, Mrs. Juliana O'Connor Connolly, raising their concern about the preservation of the West Bay Road in its entirety in perpetuity as a public vehicle road between George Town and West Bay.
11 th January 2013	Article in the Caymanian Compass headlined, " <i>West Bay Road Could Close Next Month.</i> "
21 st January 2013	The Applicant and 10 other members of <i>T4C</i> wrote to His Excellency enclosing a copy of Lord Gifford's opinion complaining about the Dart deal and particularly about the closure of the West Bay Road.
30 th January 2013	The Applicant and other members of <i>Truly 4 Cayman</i> wrote to the Premier enclosing a copy of Lord Gifford's opinion and complaining about the Dart deal and particularly the closure of the West Bay Road
1 st February 2013	The Applicant and other members of <i>T4C</i> wrote to Minister Mark Simmonds M.P., the UK Minister responsible for the Overseas Territories, contending that the Agreement was <i>ultra vires</i> .
14 th February 2013	Article appears in the Caymanian Compass headlined " <i>West Bay Road Closure Imminent</i> "
15 th February 2013	The Applicant makes an application for legal aid.
20 th February 2013	Subject to a requirement to raise the sum of C\$3,000 per month by way of contributions from interested parties, legal aid granted to the Applicant for one counsel.
25 th February 2013	Attorneys at law, Campbells, and leading counsel, Mr. Neil Timms, Q.C., provisionally agreed to act for the Applicant. The Applicant deposes that, " <i>given the disparity of resources available to Government, (supported by DRCL) I considered that I needed a larger firm to act for me.</i> "
26 th February 2013	The Applicant applied for a variation of the Legal Aid certificate.
28 th February 2013	Variation to legal aid certificate granted.
4 th March 2013	Campbells, writing on behalf of <i>T4C</i> , write to both Respondents indicating <i>T4C</i> 's proposed closure of the West Bay Road and the terms of the Agreement dated the 15 th December 2011 between the Respondents and DRCL. Campbells request an undertaking not to take " <i>irremediable steps</i> " including closing West Bay Road and threaten injunction in default of an undertaking. No undertaking was given and no injunction was sought.

7 th March 2013	Article in Cayman News Service entitled " <i>More NRA Deal Changes</i> " in which it was reported that, although the Independent Review had concluded, "... <i>the deal already provided the necessary value for money required</i> " the negotiations over the third amendment were ongoing. As a result of negotiations, the CNS report indicated that the " <i>.....closure of the West Bay Road had been delayed.</i> "
8 th March 2013	Application for leave for Judicial Review pursuant to GCR O.53 filed.
13 th March 2013	Closure of West Bay Road gazetted in Cayman Islands Gazette.
14 th March 2013	Email from Court's Listing Officer confirming refusal to grant leave administratively.
15 th March 2013	The Caymanian Compass publishes an article entitled " <i>Cabinet Okays West Bay Road Closure.</i> "
17 th March 2013	Portion of West Bay Road closed.
18 th March 2013	Esterley Tibbetts Highway extension phase I opens and Applicant submits renewed application for leave pursuant to GCR O.53.
25 th March 2013	Applicant's attorneys serve renewed application on Respondents and provide DRCL with a copy of the Applicant's renewed application and ask for an undertaking. No response from the Respondents to Applicant's letters dated the 4 th March 2013 and the 25 th March 2013.
Late March 2013	Demolition work commences on closed portion of West Bay Road.
28 th March 2013	DRCL's attorneys write to Applicant's attorneys with questions which include whether a cross undertaking as to damages will be provided.
2 nd April 2013	Applicant's attorneys make a further FOI request.
3 rd April 2013	Applicant's attorneys provide DRCL's attorneys with copies of the Applicant's renewed application and supporting Affidavit and confirm that the Applicant refuses to offer a cross undertaking.
4 th April 2013	Applicant's attorneys write to Respondents and DRCL requesting an undertaking.
6 th April 2013	Last noticeable demolition work on closed portion of West Bay Road.



18 th April 2013	DRCL's attorneys file Notice of intention to appear and oppose application for leave for Judicial Review.
23 rd April 2013	4,850 tons of sand due to arrive for use in construction of public park.

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1 *POSITION OF THE APPLICANT*

2 19. Leading counsel on behalf of the Applicant submits that when an application for
3 leave to apply for JR is made after three months from when the grounds for the
4 application first arose, the Applicant must show “*good reason*” why this period to
5 seek leave to be granted should be extended.

6 20. The Applicant submits that the Respondents unlawfully abdicated or fettered their
7 inalienable discretion. They acted in a procedurally improper manner and in breach
8 of principles of natural justice in depriving those affected of any meaningful
9 opportunity to make representations. The Respondents acted without consultation
10 and prevented information from being disclosed, frustrating the bodies such as *T4C*,
11 *CCG*, *WBAC* and *SC*. The Applicant contends that this represents a very significant
12 number of concerned citizens.

13 21. In particular, leading counsel on behalf of the Applicant draws the Court’s attention
14 to clauses 127 and 128 of the Agreement. Mr. Timms highlights that the First
15 Respondent is entitled up to the end of the review period – which originally expired
16 in 2012 – to propose new and/or revised terms. Counsel highlights that, if there is
17 no agreement to the new or revised terms then the Agreement terminates.

18 22. The Applicant deposes that they have discovered, from the media reports, that the
19 parties have decided the final terms of the Agreement and therefore concludes that
20 the First Respondent no longer proposes new or different terms.



1 23. The Applicant accepts that it has been decided that the Agreement should be
2 implemented. The Applicant complains that he is unable to provide the Court with
3 the dates of the various amendments because the information has been deliberately
4 withheld.

5 24. It is the Applicant's position that he and his supporters took prompt and cooperative
6 steps to avert unnecessary litigation. Therefore the Applicant submits that it cannot
7 legitimately be said that he has not acted promptly in making his application to
8 apply for leave to apply for judicial review.

9 25. The Applicant submits that if leave is refused on the basis of delay, the
10 Respondents will have succeeded in their strategy of starving the public of
11 information until they and DRCL are in a position to take irrevocable steps to
12 implement the Agreement. The Applicant's evidence is that he has tried, without
13 success, to discover what the current position is, because he possesses only part of
14 the information.

15 26. Leading counsel for the Applicant relies on the English Queen's Bench decision of
16 *McGlenn v Waltham Contractors Ltd.* [2005] 3 All E R 1126. Judge Coulson Q.C.
17 states that the Court expects that parties will narrow issues in pre-application
18 correspondence, should allow prospective Defendants to demonstrate why
19 particular claims are doomed.



1 27. Leading counsel submits that the Applicant has assiduously attempted to fulfill this
2 responsibility. In addition, he also submits that it is very significant that the
3 Respondents have been totally silent, even in the face of Lord Gifford's advice
4 given to the group, of which the Applicant was a member, advising that this was a
5 case for Judicial Review. The Applicant submits that the Respondents will not even
6 tell the public if the road closures are imminent.

7 28. The Applicant further relies upon the Queen's Bench decision of *R v. Borough of*
8 *Milton Keynes ex p Macklen* 30th April 1996 (unrep.) where Mr. Justice Brooke
9 observed, in considering a pre-claim letter:

10 *"If adopting such a course turns out to be unsuccessful then there would surely*
11 *be little danger of the application for judicial review being turned down on the*
12 *grounds of delay because the [Applicant] had followed the very desirable*
13 *procedure of seeking to have the dispute resolved by other means."*

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15 Accordingly, the Applicant stresses that the importance of pre-action
16 correspondence and actions to the issue of promptness is plain.

17 29. The Applicant explains in his First Affidavit the unsuccessful attempts to obtain
18 funding for an application, whilst at the same time accepting that events moved on.
19 However, the Applicant complains that his efforts to get the most basic information
20 about the Agreement and amendments to it were met with silence from the
21 Respondents.

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1 30. In particular, the Applicant complains that he and his supporters do not know when
2 and how recently the Agreement has been amended. Consequently, the Applicant
3 does not concede that the 3-month time limit, pursuant to GCR O.53 must
4 commence when he first saw the Agreement on the 12th July 2012. The Applicant
5 submits that the decisions challenged are a continuum and it is the final product (the
6 final Agreement) that the Court should consider.

7 31. Accordingly, the Applicant avers that it is not his fault that he has been denied the
8 most basic information. He is left to speculate that it is most likely that the decision
9 to finally implement the Agreement has been made in the last 3 months.

10 32. Mr. Timms, leading counsel on behalf of the Applicant, submits that, in the
11 alternative, if the Court considers that the time runs from the disclosure date or
12 earlier, the Applicant seeks an extension of time pursuant to GCR O.53 r.4(1).
13 Leading counsel states that there is common ground between the parties that the
14 Court will wish to consider whether an extension of time will cause substantial
15 hardship or prejudice to the instant parties and the wider public, and whether it is
16 detrimental to good administration. Mr. Timms submits that it does not lie in the
17 mouth of the parties to the Agreement to make this assertion. Mr. Timms states that
18 it is largely the conduct of the Respondents, as well their complete failure to engage
19 with the Applicant and his supporters, which brings about this situation.

20 33. Mr Timms submits that the Respondents and DRCL have obviously amended and
21 extended time themselves. Leading counsel submits that if the Respondents and
22 DRCL had adopted a more candid and transparent approach, the delay could have
23 been avoided.



1 34. Finally, leading counsel submits that public interest can only be served by granting
2 the Applicant an extension of time in which to have leave to file for Judicial
3 Review.



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POSITION OF THE RESPONDENTS

35. Crown counsel from the Attorney General's Chambers, Ms. Reshma Sharma, on behalf of both Respondents, opposes the Applicant's application for leave to apply for Judicial Review based on lack of *locus standi* or standing, and challenges the grounds upon which the Applicant relies in his application pursuant to GCR O.53.

36. Crown counsel submits that the Applicant has failed in making his application for leave for judicial review because the application was not made promptly and, further, because the application is not within three months from the date when the grounds for the application first arose.

37. Crown counsel submits that under GCR O.53 r.4(1) time begins running from the date on which the decision [Agreement] in question was made. Ms. Sharma relies upon the decision *in R v. Cotswold District Council, ex p Barrington Parish Council* (1998) 75 P & CR 515 at 523 where Keene J. emphasized the objective nature of the parallel rule in England and the importance of what the Applicant did: "*once he knew of the decision which it sought to challenge.*"

38. Crown counsel relies upon the 6th Edition (2012) of **Fordham, Judicial Review Handbook** where the learned author states at paragraph 26.2.4:

"Time does not commence from the date of an Applicant's knowledge of the decision, although that might be of some relevance."

39. Ms. Sharma submits that the Applicant seeks to quash the decision to enter into the Agreement, as well as the decision to implement it. Ms. Sharma further submits that the Applicant has not identified the actual date of these decisions so that the Court is left with the task of determining when time began to run for the purposes of examining delay.

1 40. Accordingly. Ms. Sharma invites the Court to consider the following 4 dates set out
2 below, as putative *terminus a quo* or starting points:

3 a. **April 2011:** DRCL closed various public access points from the West Bay Road
4 to Seven Mile Beach. The Applicant deposed that this caused significant public
5 concern. Accordingly a meeting was organized by the CCG on the 14th April
6 2011 to discuss potential action for redress.

7 b. **15th June 2011:** The First Respondent announced the proposed closure of a
8 section of the Northern end of the West Bay Road. Ms. Sharma states that
9 information on the key objectives of the FCIA was provided to the public at
10 various meetings in various locations. Ms. Sharma submits that the then
11 Premier, Mr. McKeeva Bush, made a statement which is exhibited to the
12 Applicant's affidavit confirming that the First Respondent had agreed to
13 facilitate the relocation of approximately 2,500 feet of West Bay Road.

14 c. **15th December 2011:** The Respondents signed the Agreement with DRCL,
15 which means that at least 2,500 feet of West Bay Road would be relocated, and
16 the road would be closed. The Applicant confirms that T4C was aware of the
17 Agreement and that it had been signed by the Respondents and DRCL – leading
18 to the closure of that portion of the West Bay Road.

19 d. **12th July 2012:** The Agreement dated the 15th December 2011 exhibited by the
20 Applicant was leaked to and disclosed by MLA, Mr. Ezzard Miller, and
21 published by the Cayman News Service.

22



1 41. The Respondents submit that the grounds of the Applicant's claim are founded
2 principally on procedural irregularities. These are challenges which could, and the
3 Respondents say, should, have been brought after the 15th June 2011, when the First
4 Respondent publicly announced its decision to close the West Bay Road at the
5 public meeting, and announced it in considerable detail.

6 42. Ms. Sharma submits that in the ensuing months after the 15th June 2011 it was open
7 to the Applicant or *T4C* or any aggrieved persons to challenge the Respondents'
8 decision on the basis that there had been no public consultation and no reasons had
9 been given for the decision. Furthermore, Crown counsel submits that it was open
10 to the Applicant, *T4C*, *CCG*, *WBAC* and *SC*, "*..or those affected*" to submit that no
11 opportunity had been given to them to make any representations and offer
12 alternative suggestions.

13 43. Ms. Sharma also submits that it was open to the Applicant, *T4C*, *CCG*, *WBAC* and
14 *SC* or any persons affected to contend that the First Respondent had failed to make
15 an "*open minded decision, taking into account, and in the light of, any*
16 *representations.*"

17 44. Crown counsel contends that all these challenges, which are procedural in nature,
18 did not depend on the physical availability of the Agreement and the Applicant was
19 not prejudiced in his ability to bring judicial review proceedings simply by not
20 having sight of the Agreement.



1 45. The Respondents rely on the decision of Mr. Justice Laws, as he then was, in *R v.*
2 *Secretary of State for Trade and Industry, ex p Greenpeace Limited* [1998] Env.
3 L. R. 415, frequently referred to as “the Greenpeace” decision. In that case the
4 Applicants contended that the government’s announcement of the 21st November
5 1995 could have been a “*terminus a quo requiring action*” and amounted to “no
6 *more than an act publicizing the government’s intention to consider applications*
7 *for licenses.*”

8 Crown counsel relies on the dicta of Mr. Justice Laws, at the bottom of page 430,
9 where he states:

10 *“Quite aside from the fact that we are long past the stage where judicial review*
11 *bites only on a distinct executive decision, itself having direct consequences*
12 *upon an affected person’s rights, the announcement of November 21, 1995 was*
13 *a specific act by government – not a piece of advice, as might be contained in a*
14 *circular – when at once affected third party rights: the oil companies could bid*
15 *only for the tranches them (sic) promulgated.”*

16
17 46. The Respondents contend that the Applicant’s procedural challenges could also
18 have been made after the execution of the Agreement on the 15th December 2011, at
19 what was a well publicized event.

20 47. Crown counsel submits that even if the Applicant did not avail himself of that
21 earlier opportunity, they received a copy of the Agreement on the 12th July 2012, at
22 which time the Applicant and T4C would have had the very document lying at the
23 heart of the matter.

24

25



1 48. The Respondents contend that the Applicant and *T4C* and any affected persons
2 were obliged to act with the requisite degree of promptness in pursuing legal
3 remedies – particularly where third party interests, over and above those of the
4 Respondents, were involved.

5 49. Accordingly, Crown counsel submits that, for these reasons, the decisions
6 challenged are not a continuum and, in all the circumstances of this case, there has
7 been undue delay by the Applicant in making the application for leave to apply for
8 Judicial Review.

9 50. Crown counsel on behalf of the Respondents accepts that the Applicant is entitled
10 to apply for an extension of time – if there is good reason.

11 51. Crown counsel submits that the Court must examine:

- 12 i. Whether the Applicant has a reasonable objective excuse for his delay;
- 13 ii. What, if any, is the damage in terms of hardship or prejudice to third
14 party rights and detrimental to good administration, which would be
15 occasioned if leave were not granted;
- 16 iii. Even if there is substantial damage within any of these categories, does
17 the public interest require that the Court grants leave;
- 18 iv. The strength of the Applicant's claim.

19 52. The Respondents highlight the various reasons given by the Applicant to justify his
20 delay in bringing this application for leave for judicial review.

21

1 53. The Applicant deposes to the fact that *T4C* resolved to explore the possibility of
2 pursuing an application for judicial review of the decision by the Respondents to
3 enter into an agreement, and approached approximately 20 lawyers/law firms, to
4 see if they would be prepared to take the case on. The Applicant and *T4C* met with
5 rejections “generally on the grounds of capacity and conflict of interest” from all 20
6 lawyers/law firms.

7 The Respondents complain that there is no evidence before the Court of which law
8 firms were approached or of the dates on which the meetings were held for the
9 purpose of retaining representation to pursue an application for JR.

10 54. Crown counsel highlights that the Applicant states further, in his affidavit, that

11 *“...it was apparent that funding would be a difficulty and we did not have*
12 *enough information upon which to take advice, and [it was apparent] that we*
13 *would find it difficult to find lawyers.”*

14 The Applicant further stated:



“we did not consider that there was any realistic prospect that we would be
 granted legal aid to challenge the government. In the circumstances, we did not
 believe that legal aid was an option.”

18 The Respondents’ response to these excuses is that the Applicant gives no basis
19 whatsoever for *T4C*’s belief that legal aid was not an option, nor does he show any
20 evidence of any attempt to make an application for legal aid. The Respondents
21 contend that the idea was simply dismissed.

1 Ms. Sharma highlights the fact that the perceived difficulty in identifying a law firm
2 and a Queen's Counsel to take the case on, on legal aid rates, is somewhat at odds
3 with the Applicant's earlier evidence that there was not enough information upon
4 which to take advice.

5 55. Ms. Sharma points out that the Applicant confirms that fundraising efforts were
6 successful and consequently Lord Gifford Q.C. was retained in early June 2012 to
7 advise *T4C*. Meetings were then held with Lord Gifford Q.C. in Jamaica by
8 members of the *T4C* group for three days in July 2012.

9 The Respondents point to the fact that the Applicant avers that:

10 *"....at this stage, however, it was not possible for us to fully assess whether the*
11 *Agreement and decisions were lawful, were enforceable as a matter of law, or*
12 *were procedurally improper."*

13 The Respondents contend that there is an absence of any accompanying explanation
14 for this view.

15 56. The Respondents highlight the fact that *T4C* and the Applicant said that funding
16 was an issue in October 2012. The Respondents also highlight the fact that *T4C* and
17 the Applicant had discounted legal aid as a viable option. The Respondents again
18 highlight that there is no evidence of any efforts to apply for legal aid, and there is
19 an absence of evidence as to what transpired in the three months which passed
20 before *T4C* and the Applicant decided that "*the campaign was closed.*"



1 Crown counsel submits that, the fact that, some 4 months later, in 2013, legal aid
2 was granted within a few days, militates strongly against the Applicant's earlier
3 assertion that legal aid was not a viable option; particularly, when there is no
4 evidence of any effort on behalf of *T4C* or the Applicant to apply for legal aid.

5 57. In conclusion, the Respondents submit that there is no reasonable excuse for the
6 Applicant's lack of promptness in bringing these proceedings. Furthermore, if the
7 Court is inclined to use the final date of the 12th July 2012 as the trigger for the
8 running of time, the Applicant's evidence demonstrates a lack of urgency in the
9 actions taken by him, or by *T4C* to seek legal redress, and, particularly so with
10 respect to applying for legal aid.

11 58. In completing her submissions in opposing the Applicant's application for leave to
12 apply for Judicial Review and the Applicant's application for an extension of time
13 to apply for leave for Judicial Review, Ms. Sharma submits that any extension of
14 time must now cause significant hardship and prejudice to DRCL. Ms. Sharma
15 points out that the road works to date must have incurred significant expenditure on
16 the part of DRCL. Furthermore Ms. Sharma argues that the following reasonable
17 assumptions can be made:

- 18 i. A number of other contracts with third parties (local and overseas) for
19 the provision of goods and services are likely to have already been
20 executed.
- 21 ii. DRCL may have engaged a number of consultants, advisers and experts
22 in areas such as engineering, procurement, construction and
23 commissioning to assist in the negotiations leading to the execution of





1 the Agreement and the performance of its (DRCL's) contractual
2 obligations under the said Agreement.

3 iii. A number of other applications may have been made, e.g. in relation to
4 planning, which, if granted, may be of limited duration.

5 iv. Financing arrangements may have been put in place.

6 59. Ms. Sharma highlights that the Applicant's only real concern and interest in this
7 matter appears to be the closure of the West Bay Road. Ms. Sharma submits that the
8 Applicant takes no issue with the other aspects of the Agreement, other than to
9 complain about the concessions that DRCL will gain.

10 60. In relation to the Applicant seeking to quash the decision to enter into and execute
11 the Agreement, Ms. Sharma submits that this would be highly disproportionate
12 relief, when weighed against the likely prejudice that DRCL may sustain with such
13 an action.

14 61. Ms. Sharma submits that to grant the Applicant leave to apply for Judicial Review
15 or an extension of time to apply for leave for Judicial Review, would be detrimental
16 to good administration. Ms. Sharma relies upon the House of Lords decision of *R v.*
17 *Dairy Produce Quota Tribunal, ex p Caswell* [1990] 2 A.C. 738, and the Judgment
18 of Lord Goff at paragraph F on page 749, where he explains what is meant by
19 "*detrimental to good administration*" as laid down by s.31(6) of the Senior Courts
20 Act 1981:

21 "*But it is of importance to observe that section 31(6) recognises that there is an*
22 *interest in good administration independently of hardship, or prejudice to the*
23 *rights of third parties.*"



1 Ms. Sharma explains that, in order to avoid actions that are detrimental to good
2 administration, what is required is what Lord Goff said at paragraph H on page 749:

3 *"... a regular flow of consistent decisions, made and published with reasonable*
4 *dispatch; in citizens knowing where they stand, and how they can order their*
5 *affairs in the light of the relevant decision."*

6 In that case the Court further held that if the Applicant's application for substantial
7 relief were successful, a specific number of earlier claims could be re-opened.
8
9 Accordingly, Ms. Sharma submits that this Court should adopt a similar approach
10 to that of the House of Lords in *Caswell*, and consider the possible flood of other
11 challenges to the Respondents' decision that could arise at this very late juncture,
12 should leave be granted.

13 62. In this regard it is the Respondents' position that the Agreement with DRCL dated
14 the 15th December 2011 is intended to improve the Cayman Islands tourism
15 product, one of the primary pillars of the local economy; encourage employment
16 and local business; modernize the roads and other infrastructure; assist with the
17 revitalization of the economy; and, deliver solutions to national challenges –
18 without incurring further public debt at a time when the Islands are constrained
19 from further borrowing.

20 63. Accordingly, Ms. Sharma on behalf of the Respondents submits that, should the
21 Court grant the Applicant an extension of time to file for leave to apply for Judicial
22 Review or grant the Applicant leave to apply for Judicial Review outside of the 90
23 days, the First Respondent's efforts for an economic turnaround will be adversely
24 affected, and ultimately, the interests of the wider public will be adversely affected.

1 64. Finally, Ms. Sharma submits that it is the position of the Respondents that the
2 public interest does not require the grant of leave for Judicial Review in all the
3 circumstances of this case.



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POSITION OF DRCL

65. Lord Goldsmith Q.C., leading counsel on behalf of the interested party, DRCL supports the submissions made by Crown counsel on behalf of the Respondents.

66. Lord Goldsmith Q.C. directs the Court's attention to the Applicant's original application for leave, dated the 8th March 2013, which he now seeks to renew, and which gives the following decisions and declarations of the Respondents in respect of which relief is sought:

i. The decision to execute and the execution of an Agreement with Dart Realty (Cayman) Ltd. ("DRCL") dated the 15th December 2011 as amended or varied subsequently on dates unknown ...

ii. The decisions to make and/or (sic) the Public Roads Declarations and other steps of unknown date, purportedly made pursuant to, or in consequence of, the said Agreement to approve, adopt, lay out and maintain as public roads, certain planned rights of way, and to close certain public roads, vesting land in DRCL as therein set out

67. Accordingly Lord Goldsmith submits that time runs from the 15th December 2011 and therefore, *prima facie*, expired on the 15th March 2012, or some time before, because the challenge is to the decision to enter into the Agreement.



1 68. On behalf of DRCL Lord Goldsmith submits that the Applicant was aware of the
2 potential closure of a portion of the West Bay Road far earlier than the 15th March
3 2012. Lord Goldsmith points out that in the Applicant's First Affidavit he refers to
4 a public meeting in West Bay held on the 15th July 2011, (which was subsequently
5 reported in the Caymanian Compass), at which the First Respondent delivered a
6 presentation explaining the FCIA and identifying the proposed closure of the West
7 Bay Road, when it was stated that the First Respondent: "... *had entered into a*
8 *partnership Agreement with DRCL.*"

9 69. Lord Goldsmith directs the Court's attention to the evidence from the Applicant at
10 the public meetings, geared at raising awareness of the FCIA and the planned road
11 closure, which were held on the 19th January, 16th February and the 12th April 2012.
12 Lord Goldsmith also refers to the letters outlining T4C's objections to that road
13 closure, which were sent as early as the 11th March 2012. Accordingly, Lord
14 Goldsmith submits that the Applicant and T4C were aware of the decisions, which
15 were known publicly, and by him in particular, since 2011. Accordingly, DRCL
16 submits that the 90 days expired on the 15th March 2012.

17 70. However, if that is not the date from which time runs, leading counsel on behalf of
18 DRCL submits that, given that the Agreement forms the basis for the Application
19 for leave to apply for Judicial Review, grounds for the Application would then first
20 arise at the very latest on the 12th July 2012 – when the Agreement was published
21 by the Cayman News Service. Lord Goldsmith submits that the 3-month period set
22 out under GCR O.54 r.4 expired, at the very latest, on the 12th October 2012 –
23 approximately 5 months before the Applicant's application was filed.



1 71. In examining the Applicant's reasons for the delay in applying for Judicial Review,
2 Lord Goldsmith points out that the Applicant has given evidence that *T4C* and the
3 Applicant approached approximately 20 lawyers/law firms to see whether they
4 would be prepared to take the case on, but met with rejections generally on the
5 grounds of capacity and conflict of interest from all 20 lawyers/law firms. Lord
6 Goldsmith complains that the Applicant has not provided evidence or even details
7 of the approaches to the law firms or the responses received, so DRCL is not aware
8 of the reasons for the rejections, other than that some are for lack of capacity and
9 others for conflict of interest. Lord Goldsmith states on behalf of DRCL that the
10 apparent difficulty in securing legal representation cannot be an excuse for the
11 delay in issuing the Applicant's application and points to the following evidence
12 submitted by the Applicant:

13 i. *T4C* first considered an application for Judicial Review on the 23rd
14 February 2012. The Applicant states that this idea was dismissed
15 because "*.... it was not practical to pursue a Judicial Review at that*
16 *stage.*"



19 ii. *T4C* reviewed its decision to pursue an application for Judicial Review
20 on the 13th April 2012.

21 iii. *T4C* received the written legal opinion of Lord Gifford Q.C. on the 21st
22 July 2012, which considered what avenues existed to challenge the
23 transfer of parts of the West Bay Road to DRCL under the Agreement.

24 iv. *T4C* then decided not to proceed with legal redress and the application
25 for Judicial Review on the 25th October 2012.



1 v. On or about the 15th February 2013 the Applicant changed his mind and
2 applied for civil legal aid, which was granted 5 calendar days later on
3 the 20th February 2013. Mr. Phillip Ebanks was appointed counsel,
4 although he subsequently advised the Applicant that he would no
5 longer be able to represent him after the grant of legal aid.

6 vi. Five days later Messrs. Campbells, attorneys at law, and Mr. Timms
7 Q.C. agreed to represent the Applicant in these proceedings.

8 72. Lord Goldsmith submits that the Applicant thus spent approximately 12 months
9 considering whether or not to apply for Judicial Review and/or issue proceedings.
10 Lord Goldsmith submits that, notwithstanding that DRCL is not aware of the
11 reasons why counsel initially rejected *T4C's* approaches, it is certainly evident that
12 once legal aid was obtained it took very little time for the Applicant to source and
13 retain legal representation.

14 73. Moreover, Lord Goldsmith submits that there is no justification sufficient to
15 outweigh the undue delay. Lord Goldsmith submits that it is not open for the
16 Applicant to watch the development take place at the site, make a conscious
17 decision not to issue legal proceedings, wait for approximately one year, change his
18 mind, apply for legal aid, and, then issue his application on the basis that the delay
19 is explained by the difficulties in coming to that decision to apply for leave to apply
20 for Judicial Review.

21 74. Accordingly, Lord Goldsmith submits that in the above circumstances the
22 Applicant cannot argue that the delay in issuing his application was caused by
23 difficulties in obtaining legal aid and obtaining representation.

1 75. Turning to hardship and prejudice to third parties and the question of whether the
2 relief sought would be detrimental to good administration Lord Goldsmith submits
3 that it is over 20 months since information regarding the proposed closure of part of
4 the West Bay Road was first provided to the public at the meeting held in West Bay
5 on the 15th June 2011 and it has been over 15 months since the Agreement was
6 signed.

7 76. Lord Goldsmith relies upon the contents of Mrs. Doak's affidavit, which confirms
8 that the Applicant and T4C have witnessed construction work on a number of major
9 projects included in the NRA Agreement, which include the following by way of
10 example:

- 11 i. The demolition of the old Courtyard Marriott;
- 12 ii. The realignment and widening of the Esterley Tibbetts highway;
- 13 iii. The commencement of the building of the extension to the Esterley
14 Tibbetts highway;
- 15 iv. The planning and construction of the public park;
- 16 v. The development of new roundabouts and feeder roads;
- 17 vi. The temporary closure of roads such as Yacht Drive, Salt Creek and
18 Governor's Way.

19 Lord Goldsmith submits that it is clear from the Agreement that the works
20 referenced above precede the closure of part of the West Bay Road.



1 77. Accordingly, Lord Goldsmith submits that the hardship suffered by DRCL, should
2 the remedies sought in the Applicant's application be granted, would be substantial.
3 Mrs. Doak avers in her affidavit that to date, DRCL has spent in excess of US\$38
4 million complying with its obligations under the Agreement. Furthermore, design
5 work on the new hotel (incurring expenses to DRCL totalling US\$5.7 million) is
6 continuing at a fast pace in order to try to complete the project by the 2016 high
7 tourist season.

8 78. DRCL submits that if the Applicant had brought his application promptly, that is,
9 when he became aware of the planned closure of the portion of the West Bay Road,
10 then DRCL could have taken into account a possible delay.

11 79. Furthermore DRCL submits that any delay in the project at this late stage would
12 impact construction works. At present there are 10 workers on the new hotel project
13 – excluding the design team. By late 2013 the workforce is estimated to be 60 to 70.
14 And, by the 1st and 2nd quarters of 2014 DRCL anticipates the workforce to increase
15 to 200. Mrs. Doak states that by the 4th quarter in 2014 the workforce is estimated
16 to be between 400 and 450. DRCL expects to engage only Cayman companies in
17 construction works and the actual number of Caymanians employed will depend on
18 the employee ratios of the engaged companies. In relation to the work on the
19 demolition of the Courtyard Marriott hotel, DRCL's records show that 75% of the
20 workforce has been Caymanian.

21 80. Accordingly, Lord Goldsmith submits that it is not open to the Applicant to witness
22 the above construction works undertaken at DRCL's expense, await the
23 announcement of the imminent closure of a portion of the West Bay Road, and then
24 apply at the last moment for leave to apply for Judicial Review of the Agreement.



1 81. Finally Lord Goldsmith submits that, even if there were good reasons for the
2 Applicant's delay, which DRCL denies, the hardship that would be caused to
3 DRCL by the remedies sought, and by the Applicant's delay, is such that it would
4 not be appropriate for the Court to grant the Applicant leave to apply for Judicial
5 Review of the Agreement.



1 *ANALYSIS & CONCLUSION*

2 82. I am grateful to all three counsel and instructing attorneys for the well reasoned
3 submissions on the facts and the law.

4 83. The law in relation to Judicial Review and the question of time has been in place
5 for many years and it is well established that any Applicant wishing to seek leave to
6 bring Judicial Review must make the application promptly and "*in any event within*
7 *three months from the date when the grounds for the application first arose.*"

8 84. Accordingly, if the application is not made promptly or within three months from
9 the date when the grounds for the application were known, it would, under normal
10 conditions, be struck out, unless there is "*good reason*" for extending the period
11 within which the application should have been made.

12 85. In the House of Lords decision of *O'Reilly v. Mackman* [1983] 2 A.C. Lord
13 Diplock stated at paragraph H on page 280:

14 *"The public interest in good administration requires that public authorities and*
15 *third parties should not be kept in suspense as to the legal validity of a decision*
16 *the authority has reached in purported exercise of decision-making powers for*
17 *any longer than is absolutely necessary in fairness to the person affected by the*
18 *decision."*

19
20 Lord Diplock's dictum in *O'Reilly v. Mackman* has been cited with approval by
21 Campbell Ag. J. in the Grand Court decision of *R v. Ebanks ex p Henderson*
22 [2009] CILR 48 at page 54.



1 86. At paragraph 26.1.2 of **Fordham, Judicial Review Handbook** the learned author
2 cites the authorities, confirming that Judicial Review matters must always include
3 the interests of speedy certainty. Indeed, in the recent House of Lords case of *A v.*
4 *Essex County Council* [2011] 1 A.C. 280 at paragraph 116, Baroness Hale,
5 endorses the proposition that:



7 *"There is a significant public interest in public law claims against public bodies*
8 *being brought expeditiously [as] true in judicial review, when remedies are*
9 *sought to quash administrative decisions which may affect large numbers of*
10 *people or upon which other decisions have depended and action has been taken*
11 *[and which is] normally a prospective remedy, aiming not only to quash the*
12 *past but also to put right the future."*

13 This speedy certainty concept is also endorsed by Carnworth LJ (as he then was) in
14 *Trim v. North Dorset District Council* [2011] 1 WLR 1901 where he stated at
15 paragraph 23:

16 *"It is in the public interest that the legality of the formal acts of a public*
17 *authority should be established without delay."*

18
19 87. It is clear from the case law that an applicant must act with promptness. Promptness
20 is the primary requirement. Indeed, there are a number of cases which make it quite
21 clear that an applicant has a duty to act promptly and not to wait up to the
22 maximum of three months to file the application for leave. As Mr. Justice Sedley
23 stated in *R v. Chief Constable of Devon and Cornwall ex p Hay* [1996] 2 All E R
24 711 at page 732:

25 *"The practice is to work on the basis of a three month limit and to scale it*
26 *down wherever the features of the particular case make that limit unfair to the*
27 *Defendant or to third parties."*

28

1 Accordingly, the three-month/90-day deadline is the secondary provision of GCR
2 O.53 r.4(1).

3 88. The Respondents contend that the case before this Court is analogous to a planning
4 case where developers require certainty in order to continue with the Planning
5 development. In particular the Respondents rely upon the Judgment of Keene LJ in
6 *R (Finn-Kelcey) v. Milton Keynes Borough Council* [2008] EWCA civ. 1067
where he stated at paragraph 22:



10
11 *"The importance of acting promptly applies with particular force in cases
12 where it is sought to challenge the grant of planning permission."*

13
14 89. In the case before this Court we have the intervention of an interested party, namely
15 DRCL, who has submitted that the requirement for promptness is especially
16 important where other interests are affected – particularly those of third parties. The
English Court of Appeal in *R v. Secretary of State for Health and Another ex p*
Furneaux and Others [1994] 2 All E R 652 confirmed in the Judgment of Lord
Justice Mann, at paragraph E on page 658:

17 *"The obligation under the rule (Order 53) is to proceed promptly. That*
18 *obligation is of particular importance where third parties are concerned."*

19
20 90. In another English Court of Appeal decision of *R v. Avon County Council ex p*
21 *Terry Adams* [1994] Env L.R. 442, Lord Justice Gibson gave the Judgment of the
22 Court and stated at page 478:

23 *"There is much importance in the principle that, if objection is to be made by*
24 *an objector to the conduct by a public authority of a continuing administrative*
25 *process, in which costs will be incurred by the authority and by other interested*
26 *parties, application should be made promptly."*

1 91. As stated above, where the Court considers that there has been undue delay in
2 making an application for Judicial Review, the Court may refuse to grant leave for
3 the making of the application. The Court may also reject the application if the Court
4 considers that the granting of the relief sought would be likely to cause substantial
5 hardship to, or substantially prejudice the rights of, any person, or would be
6 detrimental to good administration.

7 92. All parties cited cases in relation to the question of “undue delay” and whether the
8 relief sought would be likely to cause “*substantial hardship to, or substantially*
9 *prejudice the rights of any person or would be detrimental to good administration.*”

10 93. It is clear from the case law that the obligation to act promptly and in any event,
11 within three months, is even more important when third parties are involved.
12 Accordingly, the Respondents argue that there is, “undue delay” within the meaning
13 of section 31(6) of the Senior Courts Act whenever an Applicant has failed to bring
14 his application for leave promptly, irrespective of whether the Applicant has good
15 reason or an extended period. The English Court of Appeal made this clear in *R v.*
16 *Stratford on Avon District Council ex p Jackson* [1985] 1 W.L.R 1319. Lord
17 Justice Ackner (as he then was) stated at paragraphs E and F on page 1325:



18 “..... we have concluded that whenever there is a failure to act promptly or
19 within three months there is “undue delay”. Accordingly, even though the court
20 may be satisfied in the light of all the circumstances, including the particular
21 position of the applicant, that there is good reason for that failure, nevertheless
22 the delay, viewed objectively, remains “undue delay.””

24 This particular dicta from Lord Justice Ackner was quoted with approval in the
25 Grand Court by Levers J. in *Golden Accumulator Ltd. and Coral House Limited v.*
26 *Cayman Islands Monetary Authority* [2004-2005] CILR 565 at 573.

1 94. The Applicant submits that he and *T4C* took prompt and cooperative steps to avert
2 unnecessary litigation and therefore it cannot legitimately be said that he did not act
3 promptly.

4 95. Furthermore, in support of his application for an extension of time the Applicant
5 asserts that he and *T4C* were starved of information. They tried in vain to discover
6 the current position and only ever received part of the information. The Applicant
7 submits that their efforts to obtain the most basic information and enter into
8 dialogue were met with deliberate silence and, accordingly, this lack of candour and
9 transparency caused considerable delay.

10 96. The learned author of **Fordham, Judicial Review Handbook** devotes a short
11 paragraph (26.2.4.) to the running of time and the relevance of the Claimant's
12 knowledge. The learned author highlights the fact that time runs from the decision,
13 not from knowledge, and cites *R v. Department of Transport ex p Presvac*
14 *Engineering Ltd.* [1992] 4 Admin L R 121 at 133 D-H, where the Court stated that
15 the relevant date is when then grounds arose, not the Claimant's knowledge.

16 97. In the House of Lords decision of *R v. Dairy Produce Quota Tribunal ex p*
17 *Caswell* [1990] 2 A.C. 738 Lord Goff stated at paragraphs B-C on 747:

18 *"It follows that, when an application for leave to apply is not made promptly*
19 *and in any event within three months, the court may refuse leave on the ground*
20 *of delay unless it considers there is good reason for extending the period; but,*
21 *even if it considers that there is such good reason, it may still refuse leave (or,*
22 *where leave has been granted, substantive relief) if in its opinion the granting*
23 *of the relief sought would be likely to cause hardship or prejudice (as specified*
24 *in section 31(6)) or would be detrimental to good administration."*

25



1 I note that this Judgment of Lord Goff was cited with approval by Levers J. in
2 *Golden Accumulator Ltd. and Coral House Limited v. Cayman Islands Monetary*
3 *Authority* (*supra*).

4 98. Consequently it is not surprising that Mr. Justice Henderson, having read the
5 Applicant's First Affidavit, refused to grant leave on the ground of excessive delay
6 on the part of the Applicant. In my view, Henderson J. was correct. Furthermore,
7 Henderson J correctly advised the Applicant that if he wished to renew his
8 application for leave, he should do so *inter partes*, which would give the
9 Respondents a full opportunity to address the merits and the issues of delay and
10 standing.

11 99. When an Applicant is out of time, the Court may give consideration to extending
12 the time for applying for leave, provided there is "good reason" for doing so.
13 Whether there has been "undue delay" within the meaning of s.31(6) of the Senior
14 Courts Act has to be determined objectively. As the editors of the 1999 Supreme
15 Court Practice state at O.53 r.14 paragraph 58:

16 "Thus, wherever there is a failure to comply with [O.53] r.4(1), (i.e. a failure
17 to apply for leave promptly or within the three month period, as the case may
18 be) there is "undue delay" for the purpose of s.31(6), even though the court is
19 satisfied that there are good grounds for extending time under r.4. In such
20 cases the court retains a discretion under s.31(6) to refuse to grant leave or to
21 refuse the relief sought at the hearing of the substantive application for judicial
22 review, if it considers that the granting of the relief sought would be likely to
23 cause substantial hardship to, or substantially prejudice the rights of, any
24 person or would be detrimental to good administration. Whether the s.31(6)
25 issue should be determined at the leave stage, or whether leave should be given
26 and the s.31(6) issue dealt with within the substantive judicial review
27 proceedings depends on the circumstances."



1 100. The Applicant has applied for an extension of time in which to have his application
2 for leave to apply for Judicial Review heard. Although he does not identify any one
3 particular date on which the 3-month time period under O.53 would start to run.

4 The Applicant relies on the following reasons for the delay:

5 i. Failure to obtain information;

6 ii. Failure of the Respondents to engage in a dialogue;

7 iii. Failure to obtain legal aid or legal representation;

8 iv. No decision by the First Respondent has ever crystallized for the
9 Applicant to challenge, as the Agreement is not final and the decisions
10 are a continuum.

11 101. It is important to remind myself that the primary and substantive decision which the
12 Applicant is challenging is the Respondents' decision to execute an Agreement with
13 DRCL on the 15th December 2011, which Agreement gave effect to the closure of
14 the West Bay Road and to the approval for construction of the *ETHE* – which are
15 referred to in the Agreement exhibited by the Applicant to his First Affidavit.

16 102. I have read and reviewed the Applicant's evidence and for the reasons I now set out
17 below I find that it was open for the Applicant and/or *T4C* or any other of the
18 bodies referenced to apply for Judicial Review in a timely fashion at a number of
19 starting points.

20 a. In April 2011, DRCL closed various public access points from the West Bay
21 Road to Seven Mile Beach.



1 b. On the 15th June 2011 when the First Respondent announced the proposed
2 closure of a section of the Northern End of the West Bay Road.

3 c. On the 15th December 2011 when it was announced that the Respondents and
4 DRCL had signed the Agreement.

5 d. Finally, on the 12th July 2012 when the Agreement was leaked to and published
6 by the Cayman News Service.

7 103. It is clear that the Applicant and *T4C*, *WBAC*, and the *CCG* were all concerned
8 about the proposed closure of the West Bay Road throughout 2011. Meetings were
9 held in 2011 which specifically addressed this issue on the 14th April, the 15th June,
10 the 4th August, the 30th August, 31st August and the 29th October.

11 104. By August 2011 a petition organised by *T4C* collected over 4,116 signatories – all
12 opposing the proposed closure of the West Bay Road. This petition was presented
13 to the His Excellency the Governor on the 12th December 2011 together with a
14 letter from the Chairman of the *CCG* – which was composed in collaboration with
15 the *SC* and *WBAC* – seeking the preservation of the existing West Bay Road “*in its*
16 *entirety*” in perpetuity as a public vehicular roadway for the people of the Cayman
17 Islands.

18 105. On the 15th December 2011 there could no longer be any doubt that the
19 Respondents had entered into an Agreement and executed the Agreement with
20 DRCL. As a direct consequence of that Agreement there could no longer be any
21 doubt that a portion of the West Bay Road was going to be closed.



1 106. On the 12th June 2012 *T4C* and the Applicant were in a position to read the
2 Agreement of the 15th December 2011 on Cayman News Service which stated that a
3 portion of the West Bay Road was to be closed. This confirmed the First
4 Respondent's announcement.

5 107. In light of these facts the Court has no difficulty in finding as it has, that the
6 Applicant failed to file his application for leave to apply for Judicial Review
7 promptly. Even taking the fourth and final date of the 12th July 2012 as the *terminus*
8 *a quo* or starting point, the Applicant took another nine months in which to file his
9 application for leave to apply for Judicial Review.

10 108. In the *Greenpeace* case Laws J. states at page 424:

11 *".... a judicial review applicant must move against the substantive act or*
12 *decision which is the real basis of his complaint. If, after that act has been*
13 *done, he takes no steps but merely waits until something consequential or*
14 *dependent upon it takes place and then challenges that, he runs the risk of*
15 *being put out of court for being too late."*

16

17 Laws J. continued at page 424:

18 *"In cases of this nature because of these deep consequences which touch the*
19 *public interest, the court in its discretion – whether so directed by rules of court*
20 *or not – will impose a strict discipline in proceedings before it. It is marked by*
21 *an insistence that applicants identify the real substance of their complaint and*
22 *then act promptly, so as to ensure that the proper business of government and*
23 *the reasonable interests of third parties are not overborne or unjustly*
24 *prejudiced by litigation brought in circumstances where the point in question*
25 *could have been exposed and adjudicated without unacceptable damage. The*
26 *rule of law is not threatened, but strengthened, by such a discipline. It invokes*
27 *public confidence and engages the law in the practical world."*

28

29

30



1 Laws J. went on to state at page 425:

2 *"I think that these considerations apply with special force to proceedings*
3 *brought by a public interest plaintiff such as the applicants. Such a litigant, ...*
4 *has to act as a friend of the court; precisely because he has no rights of his*
5 *own, his only locus is to assert the public interest. Litigation of this kind is now*
6 *an accepted and greatly valued dimension of the judicial review jurisdiction,*
7 *but it has to be controlled with particular strictness."*

8
9 109. As Laws J. said at the bottom of page 430 in **Greenpeace**:

10 *"Quite aside from the fact that (pace Sir William Wade) we are long past the*
11 *stage when judicial review bites only on a distinct executive decision itself*
12 *having direct consequences upon affected persons' rights, the announcement of*
13 *November 21, 1995 was a specific act by government – not a piece of advice, as*
14 *might be contained in a circular - when at once affected third party rights: the*
15 *oil companies could bid only for the tranches them (sic) promulgated."*



17 Mr. Justice Laws could have written these very words for the announcement made
18 on the 15th June 2011 by the First Respondent that a portion of the West Bay Road
19 was going to be closed.

20 110. In the case before me it should have been clear to the Applicant and T4C that when
21 the First Respondent announced that a portion of the West Bay Road was going to
22 be closed and relocated to the Esterley Tibbetts highway that was the starting point
23 at which the application for leave for judicial review should have commenced. That
24 was the act about which the Applicant complains and that is the act he should have
25 used as the *terminus a quo* to trigger the application for leave to obtain judicial
26 review.

27 111. Another reason that the Applicant submits for applying for an extension of time is a
28 combination of lack of legal representation and legal aid.

1 112. *T4C* incorporates *CCG*, the *WBAC*, the *SC* group, the *Coalition to Keep Bodden*
2 *Town Dump Free*, and, as the Applicant states, they are “a broad and significant
3 *group of individuals*”. Lord Gifford Q.C. was retained in early June 2012. It is clear
4 that sufficient funds were raised for members of *T4C* to travel to Jamaica and spend
5 three days with Lord Gifford setting out their complaints and seeking advice as to
6 the question of legal redress.

7 113. It must be remembered that *T4C* first considered an application for Judicial Review
8 on the 23rd February 2012, but, after considering it, the idea was dismissed because,
9 “it was not practicable to pursue a Judicial Review at that stage.” Furthermore, on
10 the 13th April 2012 *T4C* reviewed its decision to pursue an application for judicial
11 review. At that time, which is some 12 months ago, the Applicant candidly
12 recognised that it was apparent that *T4C* would not be able to make progress
13 without legal action. Yet, for some unaccountable reason nothing came of *T4C*’s
14 review of its decision to pursue an application for leave for Judicial Review.

15 114. On the 21st July 2012 *T4C* and the Applicant received the written legal opinion
16 from Lord Gifford, which the Applicant again candidly confirmed advised that
17 there were serious issues which were judicially reviewable by the Cayman Court.

18 115. The Applicant has not provided the Court with *T4C*’s instructions to Lord Gifford
19 or any brief to counsel. Lord Gifford’s advice has not been put before the Court. All
20 the Court knows is that Lord Gifford provided advice and that he stated there were
21 issues for review by this Court.

22



1 116. The Applicant avers that *T4C* was comprised of a “*broad and significant group of*
2 *individuals.*” In light of the fact that this group had been considering Judicial
3 Review over many months, it is extremely unlikely that no member of the group
4 asked the question when should the application be made and are there any time
5 limits?

6 117. Furthermore, given the serious attention that was given to the whole question of
7 Judicial Review by the Applicant and *T4C*, it is inconceivable that during *T4C*’s
8 meetings with Lord Gifford the questions of promptness and the 90-day deadline
9 for the leave application did not arise. The Court finds it hard to believe that Lord
10 Gifford would provide advice without pointing out that any application has to be
11 filed promptly, or, in any event, within three months from the date of decision.

12 118. The Court does not fully understand the Applicant’s statement that the leaking of
13 Lord Gifford’s advice presented a serious problem with regard to confidentiality
14 and the integrity of *T4C*’s internal process. If anything, the fact that Lord Gifford’s
15 advice was leaked should have spurred *T4C* into urgent and immediate action to
16 apply for leave to judicially review the serious issues which Lord Gifford advised
17 them were reviewable.



18 119. In any event, the evidence is that members of *T4C* were not able to raise funds to
19 pursue judicial review and, after experiencing further difficulties with fundraising
20 and finding Cayman resident attorneys, “the campaign was closed.” This decision
21 effectively removed any possibility that the Applicant or *T4C* could meet the
22 primary requirement of promptness which is a requirement in all Judicial Review
23 applications.

1 120. As DRCL's counsel submits, *T4C* and the Applicant spent approximately one year
2 considering whether or not to apply for Judicial Review and/or issue other legal
3 proceedings. DRCL submits that it is not open for the Applicant and *T4C* to watch
4 these developments taking place at the site, make a conscious decision not to issue
5 legal proceedings, wait for approximately 12 months, change their mind to then
6 apply for legal aid and obtain legal representation.

7 121. It is clear from the evidence that Judicial Review was considered by the Applicant
8 and *T4C* for many months, and, on different occasions, they decided not to make
9 the necessary O.53 application for leave to apply. Accordingly, for the aforesaid
10 reasons I reject the inability to find legal representation and to obtain legal aid as
11 good enough reasons to grant an extension of time.

12 122. The evidence regarding hardship and prejudice to the Respondents and third parties
13 is set out above. It is clear from the case law that the Courts have very firmly stated
14 that a Judicial Review Applicant must proceed with particular urgency where third
15 party interests are involved. As Laws J. said at page 440 in *R v. SSTI ex p*
16 *Greenpeace Ltd*:





1 *"More deeply, there is every prejudice to their rights, and every detriment to*
2 *good administration, if the legal system is seen to contemplate and accept*
3 *challenges to the validity of this licensing process at a stage when the licencees*
4 *have accepted the risks of the venture on the faith of what must have seemed a*
5 *firm decision to grant the licences in question. The point is not only that the oil*
6 *companies involved in this case may lose large sums of money which, had the*
7 *applicants moved earlier, would not have been at risk. Rather, the promotion of*
8 *this challenge now would generate a severe and undesirable uncertainty within*
9 *the whole process of the licensing regime, and potentially within other*
10 *analogous regimes. If it were recognised and understood that in a regulated*
11 *system for the distribution of licences which operates by stages, everything is*
12 *vulnerable to legal action even at the last stage when the licences have been*
13 *awarded and despite all the distinct and publicized steps earlier undertaken,*
14 *there is every risk of dislocation and disruption. Potential bidders might be*
15 *deterred. The effectiveness of a system by which applications are considered*
16 *and licences awarded on the merits might be undermined: not only in the*
17 *instant case; more generally."*

18
19 Again, these words of Mr. Justice Laws could have been written for the case before
20 this Court.

21 123. The Respondents and DRCL have set out the hardship and prejudice which would
22 result if leave were granted – mainly involving a stay of the ongoing road
23 construction. The Court is acutely aware that if the Applicant's application for an
24 extension of time to apply for leave to judicially review the decision to enter into
25 the Agreement and close the West Bay Road at this very late stage is granted, the
26 hardship and prejudice suffered by the Respondents and third parties would be
27 substantial.

28 124. As is stated in the commentary on page 443 behind the *Greenpeace Law Report*,
29 which endorses the approach of the House of Lords in *O'Reilly v. Mackman*, and
30 which is relevant to this case before me, the learned authors state:

31 *"The ultimate lesson to be learned from this [Greenpeace] case is that where*
32 *the applicant is bringing an action on behalf of the public interest, the timing of*
33 *the application is crucial."*

1 The commentary goes on to add:

2 *"Perhaps it is truer to say that potentially affected parties must be put on notice*
3 *of any intended action as early in the process as possible so that any prejudice*
4 *is minimized."*

5
6 I find that if the relief sought by the Applicant were to be granted at this very late
7 stage it would cause substantial hardship and prejudice to the Respondents and
8 would be detrimental to good administration.

9 125. The Applicant gives evidence of the fact that T4C and the other groups held many
10 public meetings to protest against the closure of the West Bay Road and its
11 perceived consequences. All the active pressure groups and the Applicant have
12 made their objections widely known and, in doing so, have openly sought the
13 preservation of the West Bay Road as a public vehicular roadway for the people of
14 the Cayman Islands. The Applicant and these pressure groups have voiced their
15 complaints publicly in print, on television and on the radio. The Applicant, T4C and
16 the other pressure groups have brought their concerns about the West Bay Road
17 closure and public access to the beach before the former and the incumbent
18 Premiers of the Cayman Islands. These concerns have been presented to His
19 Excellency the Governor as well as to the former and present Ministers of the
20 Overseas Territories.



1 126. I reject the Applicant's contention that the decision to enter into the Agreement
2 with DRCL and close the West Bay Road are a continuum. There were, in my view,
3 several putative starting points to challenge the Respondents' Agreement with
4 DRCL. There were several putative starting points at which to challenge the
5 Agreement leading to the closure of the West Bay Road. In addition the Applicant,
6 T4C and the other pressure groups could see that developments were taking place as
7 a direct consequence of the Agreement. There were so many compelling reasons to
8 apply promptly and urgently for leave to apply for Judicial Review. They failed to
9 take the one necessary step, which was to file the application for leave, promptly.

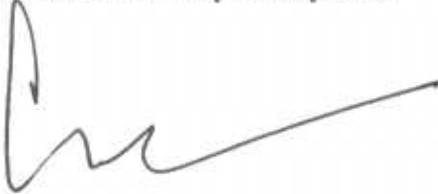
10 127. Accordingly I hereby refuse the application by the Applicant to extend the period in
11 which to file his application for leave to apply for judicial review. There has been a
12 complete lack of promptness, and, in all the circumstances of this case, excessive
13 and undue delay.

14 128. Accordingly, and for the aforesaid reasons, I dismiss the Applicant's application for
15 leave for Judicial Review.

16 129. In light of my decision on the requirement for promptness, and the Applicant's
17 delay, it is not necessary for me to consider the questions of sufficient interest or
18 standing.

19 Dated this the 1st day of May 2013

20
21
22



23 **Honourable Mr. Justice Charles Quin**
24 **Judge of the Grand Court**

