

**IN THE SUPREME COURT OF BELIZE, A.D. 2011**

**CLAIM NO. 506 OF 2006**

**BETWEEN:**

**VANCE CABRAL**

**Claimant**

**AND**

**BELIZE TOURISM BOARD**

**Defendant**

**December 15 and 16, 2011.**

**Appearances:** Mr. Dean Lindo, SC for the Claimant.  
Mr. Darrell Bradley for the Defendant.

**BEFORE THE HON. CHIEF JUSTICE KENNETH BENJAMIN.**

**JUDGMENT**

[1] By a Claim Form filed with Statement of Claim on September 25, 2006, the Claimant claimed against the Defendant damages and interest thereon arising from the revocation by the Defendant of the Claimant's Tour Operator and Tour Guide Licences on October 31, 2005 and November 8, 2005 respectively.

[2] The Defendant, the Belize Tourism Board, is a statutory body established by section 3 of the Belize Tourism Board Act, Chapter 275. The Claimant, Vance Cabral, averred in his Statement of Claim that he is the proprietor of Advance Diving Shop situate in Placencia Village in the Stann Creek District. The said Statement of Claim challenged the decisions of the Defendant in revoking the Defendant's Tour Operator Licence and Tour Guide Licence.

[3] A Defence having been filed on October 18, 2006, the matter proceeded to a case management conference, when an order was made on January 25, 2007. Standard disclosure was made by both parties and witness statements were filed. Thereafter a trial date of May 29, 2007 was fixed but there followed two adjournments to subsequent dates and then adjournment *sine die* upon non-appearance of Counsel.

[4] Presently before the Court is a Notice of Application by the Defendant to strike out the Claim pursuant to Rule 26.3(1)(a), (b) and (c) of the Supreme Court (Civil Procedure) Rules, 2005. The grounds for the application are as follows:

- (1) The Claimant has failed to provide notice to the Defendant of his intention to commence a claim prior to commencing the Claim as required by section 3 of the Public Authorities Protection Act, Chapter 31;
- (2) The Statement of Claim fails to plead a recognisable cause of action in that damages are claimed without any declaration being sought or without any other cause of action being set out;
- (3) The Claim amounts to an abuse of process in that the same ought to have been brought in public law for judicial review or other administrative claim under Part 56 of the Rules rather than by way of ordinary proceedings by Claim Form seeking damages.

#### NOTICE OF ACTION

[5] The Defendant's first ground rests upon section 3 of the Public Authorities Protection Act, Cap. 31 which reads:

- “(1) No writ shall be sued against, nor a copy of any process be served upon any public authority for anything done in the exercise of his office, until one month after notice in writing has been delivered to him, or left at his usual place of abode by the party who intends to sue out such writ or process, or by his attorney or agent, in which notice shall be

clearly and explicitly contained the cause of the action, the name and place of abode of the person who is to bring the action, and the name and place of abode of the attorney or agent.

- (2) No evidence of any cause of action shall be produced except of such as is contained in such notice, and no verdict shall be given for the plaintiff unless he proves on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs.”

[6] The argument began with the assertion that the Defendant fails within the definition of ‘public authority’ as set out in section 2 of the Act. The section provides:

“In this Act, “public authority” includes every person filling any public position in Belize, as well as police officers, whether temporarily or permanently employed, and whether there is or is not attached thereto any salary or remuneration.”

This section must be read along with the meaning ascribed to the word ‘person’ in the Interpretation Act, Chapter 1. The meaning of person is enacted to be a natural person or a legal person including ‘any public body’. The Defendant being a public body of statutory origin falls within the definition of person contemplated under section 3 of the Public Authorities Protection Act.

[7] Learned Senior Counsel for the Claimant did not dispute the applicability of section 3, but attention was drawn to a letter dated February 21, 2006 addressed to the Defendant at a physical and postal address in Belize City by the Attorney acting for the Claimant. The letter set out the alleged facts and the complaints of the Claimant and urged the Defendant to reconsider its decision to revoke the Claimant’s Tour Guide Licence. The final paragraph of the letter reads:

‘In the event that we do not receive a reply to this letter within 3 days from the date of this letter we will proceed to file a claim in the Supreme Court for a

judicial review of the decision of the Tour Guide Licensing committee to revoke Mr. Cabral's licence.'

The Claimant relied on this letter as amounting to the Notice sufficient to satisfy section 3(1) of the Public Authorities Protection Act.

[8] The requirement of notice under section 3(1) has been the subject of decision before the Court of Appeal in **Castillo v Corozal Town Board and Acosta** 2 BZLR 365. The purport of the judgment is that the giving of notice was a condition precedent in that the said notice must be given before the issue of a writ of summons against a public authority to comply with sub-section (1) and such notice must be proved at trial to satisfy subsection (2). In **Miguel Angel Estala et al v Benque Viejo Town Board and Mena** – Action No. 283 of 2004, Awich, J followed the **Castillo** decision. However, His Lordship in the case of **Glenn Tillett v Lois Young Barrow et al** – Claim No. 778 of 2010, went on to rule that the section does not prescribe a specific format for the notice and as such all that is required is that the notice be in any form containing the requisite particulars as to: the cause of action, and the name and place of abode of the person who intends to bring the action or the name and place of abode of his or her attorney or agent. I wholly agree with this approach.

[9] Learned Counsel for the Defendant insisted that the letter of February 21, 2006 did not meet the requirements of section 3(1) in that the cause of action alluded to is that of judicial review whereas the Claim before the Court was one brought by the usual Claim Form for damages.

10. In my view, the ingredients of the notice must be strictly complied with. As such, the cause of action set out in the notice must be the same as that pleaded in the originating process. Alas, the letter of February 21, 2006 gives notice of intended judicial review but the Claim Form does not seek any relief referable to an application for an administrative order, whether by way of judicial review or otherwise. I hold that the letter is capable of amounting to notice but fails to satisfy the requirement of section 3(1) that the cause of action to be relied upon in the suit be reflected as the cause of action in such suit. In addition, for what it is worth, in

any event notice was only given as to potential proceeding to challenge the revocation of the Tour Guide Licence and not with regard to the revocation of the Tour Operator's Licence. This ruling ought to result in the striking out of the Claim. However, in the event that I am wrong, I shall proceed to consider the remaining grounds of the application to strike out the claim.

#### FAILURE TO PLEAD A CAUSE OF ACTION

[11] Learned Counsel argued on behalf of the Defendant that although the Statement of Claim sets out the facts upon which the Claimant relies, there follows, mirroring the indorsement on the Claim Form, a claim for damages. It was highlighted that the logical prayer ought to have been to seek a declaration, certiorari or some remedy or relief ahead of a claim for consequential relief by way of damages. This argument can be conveniently taken alongside the third ground which asserted that the claim amounts to an abuse of process as it seeks to circumvent the procedure dictated by Part 56 for the seeking of judicial review and administrative orders.

[12] As a matter of convenience, the Court invited Learned Counsel to address these grounds in the context of an anticipated application by the Claimant for an amendment of the Claim to include prayers for relevant declarations. This invitation was made having regard to the Claimant having conceded in skeleton arguments that the Claim ought to have been brought by way of an administrative claim seeking a declaration that the revocation of the Claimant's Licences were unlawful ahead of consequential relief being sought by way of damages. That concession was made to pave the way for an application for permission to amend the Claim Form and Statement of Claim to reflect the administrative orders which ought properly to be sought.

[13] The Defendant opposed an application for an amendment on two grounds, namely: (a) it would be unfair to require the Defendant to answer a new cause of action nearly five years after the original Claim was filed; and (b) the amendment is not allowable after the first case management conference in the light of Rule 20.1(3). The said sub-rule states:

“(3) The Court may not give permission to change a statement of case after the first case management conference unless the party wishing to make the change can satisfy the court that the change is necessary because of some change in the circumstances which became known after the date of that Case Management Conference.”

[14] Learned Queen’s Counsel explained that the circumstances giving rise to the application were that he had been retained to represent the Claimant some time after the Claim had been filed and therefore was placed in the invidious position of making the application to rectify an omission by previous legal representatives.

[15] The latitude to amend a statement of case is severely curtailed by Rule 20.1(3). The party seeking the amendment must satisfy the Court, after the first case management conference has passed, that the necessity to amend arose because of a change of circumstances which only came to light after such conference. This rule has been strictly applied in **Ormiston Ken Boyea et al v Caribbean Flour Mills Ltd – Civil Appeal No. 3 of 2004 (Dominica)** by the Eastern Caribbean Court of Appeal and in **Winston Padmore v James Morgan – CV No. 277 of 2006** by Dean Armorer, J in the Trinidad and Tobago High Court. Both Madam Justices declined to pray the overriding objective in aid of alleviating the stringency of the letter of the rule.

[16] I am therefore constrained to hold that the Claimant is precluded from seeking an amendment to his Statement of Claim. It needs to be further pointed out that the attendant delay would militate against the grant of leave to apply for judicial review as is required by Rule 56.3, although Rule 56.6, in an appropriate case, allows for proceedings by way of a claim for damages to be allowed to proceed as if permission was being sought to apply for judicial review.

[17] In the premises, the Defendant's application succeeds and it is ordered that the Statement of Case be struck out with costs in the sum of \$2,000.00.

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**KENNETH A BENJAMIN**  
**Chief Justice**