



[2016] JMFC Full 7

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE FULL COURT

CLAIM NO. 2013 HCV 01437

**CORAM: THE HONOURABLE MR. JUSTICE L. HIBBERT
THE HONOURABLE MRS. JUSTICE S. THOMPSON-JAMES
THE HONOURABLE MRS. JUSTICE M. DUNBAR-GREEN**

BETWEEN	FITZROY FAGAN	CLAIMANT
AND	THE ATTORNEY GENERAL OF JAMAICA	1ST DEFENDANT
AND	NATIONAL HOUSING TRUST	2ND DEFENDANT
AND	MINISTER OF FINANCE	3RD DEFENDANT

Hugh Wildman and Miss Barbara Hines instructed by Hugh Wildman and Company for Claimant.

Miss Monique Harrison and Miss Carla Thomas instructed by Director of State Proceedings for 1st and 3rd Defendants.

Kevin Powell and Sundiata Gibbs instructed by Hylton Powell for 2nd Defendant.

HEARD: 22 and 23 June and 28 July, 2016

Judicial Review, National Housing Trust Act, Locus Standi, Use of Contributions

HIBBERT, J

On 28 July 2016 the court delivered its decision and, as promised we now put our reasons in writing.

Background

[1] The National Housing Trust came into operation on 1 January 1979. Section 3 which deals with the establishment of the National Housing Trust states:

3.-(1) There shall be established for the purposes of this Act, a body to be known as the National Housing Trust (hereinafter referred to as “the Trust”) which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

[2] Section 4 deals with the functions of the Trust and states:

4-(1) The functions of the Trust shall be-

(a) to add to and improve the existing supply of housing by-

(i) promoting housing projects to such extent as may from time to time be approved by the Minister;

(ii) making available to such contributors as may be prescribed, in such manner and on such terms and conditions as may be prescribed, loans to assist in the purchase, building, maintenance, repair or improvement of houses; and

(iii) encouraging and stimulating improved methods of production of houses;

(b) to enhance the usefulness of the funds of the Trust by promoting greater efficiency in the housing sector.

(2) In the exercise of its functions, the Trust shall have power-

(a) to provide finance for-

- (i) development projects undertaken by the Trust pursuant to sub-paragraph (i) of paragraph (a) of subsection (1);
 - (ii) social services and physical infrastructure for communities developed under the projects;
 - (b) to administer and invest the moneys of the Trust;
 - (c) to enter into loan agreements with borrowers;
 - (d) to receive and administer funds entrusted to the Trust in accordance with the provisions of this Act;
 - (e) to make refunds and grants to contributors or any category thereof; on such terms and conditions as may be prescribed;
 - (f) to re-finance from time to time, subject to such restrictions and conditions as may be prescribed; mortgages held by members of any prescribed category of contributors; and
 - (g) to do such other things as may be advantageous, necessary or expedient for or in connection with the proper performance of its functions under this Act.
- (3) The Trust may, on such terms and conditions as it may approve, provide to such organizations and institutions as it thinks fit-
- (a) services in connection with any mortgage granted by those organizations or institutions to any person, whether a contributor or not; and;

- (b) services in connection with any approved savings instruments.

[3] Section 7 speaks to the resources of the Trust and states:

7-(1) The resources of the Trust shall comprise-

- (a) moneys derived from contributions;
- (b) moneys derived from loans raised by the Trust from time to time in accordance with the provisions of this Act;
- (c) moneys earned by or arising from investments made on behalf of the Trust;
- (d) such moneys as may from time to time be placed at the disposition of the Trust by Parliament;
- (e) moneys recovered under this Act as costs or interest under section 32 or penalties under section 37;
- (f) all moneys properly accruing to the Trust under this Act, including, without prejudice to the generality of the foregoing, the repayment of loans;
- (g) such other moneys as may lawfully be paid to the Trust.

(2) The funds of the Trust, save in so far as they may be invested or utilized pursuant to this Act, shall be held by the Bank of Jamaica or any bank approved by the Board in which public funds may lawfully be deposited.

[4] In 2013 the Government of Jamaica proposed an amendment to the Act to enable the Trust to provide financial assistance to the Government for the purpose of

budgetary support. Consequently a bill was tabled on 26 February 2013 in the House of Representatives. Stated in the Memorandum of Objects and Reasons was the following:

“Importantly, this contribution will enable the Government to undertake necessary expenditure to bolster social and physical infrastructure, particularly in areas where construction is being undertaken by the NHT.”

[5] On 27 March 2016 the National Housing Trust (Amendment) (Special Provisions) Act 2013 was assented to by the Governor General and came into force on 28 March 2016. It is to be read and construed as one with the National Housing Trust Act which is to be referred as the “Principal Act”, and all amendments thereto.

[6] Sections 2 and 3 of the Act state:

2. During the continuance of this Act, section 4 of the principal Act shall have effect as if the following were inserted next after subsection (1), as subsections (1A) and (1B)-

“(1A) In addition to the functions specified in subsection (1), the Trust may provide financing up to a maximum annual amount of eleven billion, four hundred million dollars for fiscal consolidation in respect of each of the financial years ending, respectively, on-

- (a) March 31, 2014;
- (b) March 31, 2015;
- (c) March 31, 2016; and
- (d) March 31, 2017.

(1B) Financing provided under subsection (1A) may be by way of distribution, grant or otherwise as the Minister responsible for finance may determine.”

3. This Act shall continue in force until March 31, 2017 and then expire.

The Claim

[7] On 7 March 2013 the claimant filed a claim in this court seeking a declaration that the bill, insofar as it sought to withdraw funds from the NHT, constituted a deprivation of his property in breach of the Constitution and was therefore void. He also sought an injunction to restrain the NHT from handing over funds to the Government. Consequent on the bill being enacted, an Amended Claim was filed on 26 April, 2013 in which the following was claimed:

- (i) “A declaration that the Act “The National Housing Trust (Special Provisions) Act 2013” insofar as it seeks to withdraw the said funds from the 2nd Defendant, constitutes a deprivation of the claimant’s property in breach of the Constitution of Jamaica and is therefore void
- (ii) An injunction to restrain the 2nd Defendant from handing over the funds to the 3rd Defendant.
- (iv) Costs.”

[8] The claim was accompanied by Particulars of Claim. I will make reference only to those paragraphs that I find to be germane to the issues to be resolved by the court. They may be summarized as follows:

- (a) The claimant is a citizen of Jamaica and a contributor to the NHT.
- (b) The National Housing Trust Act established a statutory trust for the benefit of the contributors such as the claimant and the Board of Directors of the NHT act as the trustees.
- (c) The contributions represent the private property of the contributors including the claimant.

- (d) The provisions of the Public Bodies Management and Accountability Act do not apply to the National Housing Trust Act.

[9] In their Defences the defendants deny that the National Housing Trust Act created a statutory trust for the benefit of the contributors or that the board of directors are trustees under the Act. They aver that the NHT is subject to the Public Bodies Management and Accountability Act and the Public Bodies Financial Distribution Regulations 2012. They deny that the Act which amended section 4 of the National Housing Trust Act contravened any of the provisions of the Charter of Fundamental Rights and Freedoms and consequently the claimant is not entitled to any of the reliefs sought. Additionally, it was averred on behalf of the 2nd and 3rd Defendants that section 15(1)(a) of the Charter of Fundamental Rights and Freedoms is not applicable to the claimants complaint.

Submissions

[10] Mr. Wildman, on behalf of the claimant, submitted that the combined effect of sections 3, 4 and 7 of the National Housing Trust Act shows clearly that Parliament intended to create a statutory trust on behalf of the contributors to the Trust. He further submitted that the “three certainties”, that is, (a) of intention to create a trust, (b) certainty of subject matter and (c) certainty of object which are requirements for the establishment of a trust are to be found in the Act.

[11] Mr. Wildman next referred to a passage in **Parker and Mellows: The Modern Law of Trusts** 9th edition page 14 paragraph 1-026 to provide a definition of a trust. He also cited other passages at page 39 paragraph 2-001 and 002 which show the classification of trusts and that statutory trusts may be created expressly or by implication.

[12] Mr. Wildman then submitted that once the relationship of trustee and *cestuis que trust* has been established it is not permissible for the trust property to be used in a

manner not prescribed by the trust. Further, he submitted, benefits which accrue to the *cestuis que trust* cannot be taken away by an act of Parliament without prompt and adequate compensation to the beneficiaries. In support he cited **Air Jamaica Ltd and Others v. Charlton and Others** (suing on behalf of themselves and members of the Pension Plan for Employees of Air Jamaica (1968) Ltd.) [1999] 4 LRC 445 and **Lilleyman and Others v. Inland Revenue Commissioners** (1964) 13 WIR 224.

[13] Having submitted that a statutory trust was created by the National Housing Trust Act and that the claimant is a beneficiary under that trust, Mr. Wildman submitted that this would entitle the claimant to make this claim by virtue of section 19(1) of the Constitution. He further submitted that even if the claimant was not a contributor to the Trust he would still have standing to bring to the claim. This right arose because the claimant is a citizen of Jamaica and the National Housing Trust is a public institution established by an act of Parliament to act in the public interest and in the public sphere. Since, as is claimed, “the actions of the defendants threatened a fundamental provision of the Charter of Fundamental Rights and Freedom, that is the right to property which the Constitution of Jamaica protects, any citizen may bring the claim”. In support of this proposition, he relied on the decision of the Supreme Court (Appellate Division) in **Farooque v. Secretary of the Ministry of Irrigation, Water Resources and Flood Control (Bangladesh) and Others** [2000] 1 LRC 1.

[14] Relying on the decision of the House of Lords in **Inland Revenue Commissioners Appellants and National Federation of Self-Employed and Small Businesses Ltd.**, Respondents [On appeal from **Reg. v. Inland Revenue Commissioners**, Ex-parte National Federation of Self-Employed and Small Businesses Ltd.] [1982] AC 617, Mr. Wildman submitted that “standing” now in public law must not be seen as an independent issue, but must be considered in the context of whether the claimant can show that there is merit to the claim. If there is merit to the claim, the court will not deny the claimant the right to approach the court for redress.”

[15] Mr. Wildman further submitted that the Trust was established for the specific purpose of providing housing solutions. Accordingly, he said, the Board of Directors must act in a manner consistent with the provisions of the Act, in particular, sections 19, 20, 21 and 22 which set out the bases on which benefits are payable to contributors. He stated that the funds held by the Trust cannot be properly used for Government access and that this is evidenced by the fact that these funds are not kept by the Accountant General, but by virtue of section 7-(2) of the Act are to be held either at the Bank of Jamaica or any bank approved by the Board in which public funds may lawfully be deposited.

[16] It was also submitted by Mr. Wildman that any provision of sums by the Board to the Government for the purpose of fiscal consolidation would amount not only to a breach of trust but also to a breach of the claimant's rights under section 15 of the Constitution. He submitted that contributions made by the claimant qualified as property and cannot be taken away except in accordance with the provisions of section 15-(i) of the Constitution. He submitted that the effect of the challenged amendment to section 4 of the Act was to create a forced grant, gift or loan from the Trust to the Government for the purpose of budgetary support. For these submissions, reliance was placed on the decisions in **Lilleyman and Ors. v. I.R.C. and Others** and **Trinidad Island-Wide Cane Farmers' Association Inc. and Attorney General v. Brakash Seereeran** [1975] 27 WIR 329.

[17] In closing, Mr. Wildman submitted that in order for Act No. 7 - 2013 to stand it must constitute an amendment to section 15-(i) of the Constitution and that no such amendment had been shown to have taken place.

[18] Miss Harrison, on behalf of the 1st and 3rd defendants, submitted that the NHT Act created a public body within the meaning of section 2 of the Public Bodies Management and Accountability Act. She also submitted that the NHT as created, is not a trust in the strict sense as it lacked the three certainties which must be present in each trust. She further submitted that where it is said that a statutory trust have been

created, regardless of the wording of the statute the statute must be examined to see whether or not the three certainties are present therein. For this, she cited a decision of this court in **Wright-Pascal v. McHugh and Others** Claim No. 2010 HCV 00024 delivered on 21 October 2011. An examination of sections 3, 4 and 7 of the Act, she submitted, confirms the absence of these three certainties.

[19] Miss Harrison also submitted that the claimant has failed to show that he has the *locus standi* to make this claim. To establish standing the claimant must show that:

- (i) that he has possession of the property concerned or has a right to, or an interest in it;
- (ii) the said property has been compulsorily taken possession of or an interest or right in it has been compulsorily acquired; and
- (iii) the compulsory taking or acquisition is not governed by a law which, inter alia, provides for compensation.

This, she submitted, the claimant failed to do, as the only entitlement the claimant has under the NHT Act is to refunds by virtue of section 21 of the Act, and there has been no assertions that he had been deprived of these or is likely to be deprived of them.

[20] Miss Harrison further submitted that Act No. 7-2013 does not provide for a withdrawal of any funds from the NHT but merely provides a discretionary power to the Trust. It, therefore, did not constitute a taking or acquisition as envisaged in section 15-(1) of the Constitution.

[21] Mr. Powell on behalf of the 2nd defendant, like Miss Harrison, submitted that the NHT Act did not create a trust as the three certainties were not present. Regarding certainty of intention, he submitted that the use of the word trust did not necessarily mean that Parliament intended to create a trust. The Act must therefore be examined to see whether or not such an intention was formed. For this, he cited **Re Ahmed and Co., (a firm) and Others** [2006] EWHC 480 (Ch), [2006] All ER (D) 195. Further, he submitted, the usual terminology found in private law trusts was not used in the NHT

Act. The word 'Trust' in the statute merely described the organization the Act created and not a legal or fiduciary relationship between the NHT and its contributors.

[22] Mr. Powell also submitted that the nature of the resources of the Trust as stated in section 7 of the Act and the manner in which they may be used as stated in section 4 do not suggest an intention to create a trust relationship between the Trust and the contributors to the Trust. Additionally, contributions are commingled with income from other sources and are not held separately for the sole benefit of the contributors. This, he submitted, also signifies the absence of an intention to create a trust.

[23] Mr. Powell also submitted that there was no certainty of beneficiaries of the alleged trust. He drew attention to the provisions of section 11 of the NHT Act as it relates to the categories of contributors, not all of whom would be entitled to benefits under the Act. He also made reference to section 21 of the Act which shows the entitlement of contributors but excludes from this entitlement employers who are also contributors. Additionally, only some contributors who met certain qualifications would be eligible to receive additional benefits. Accordingly, Mr. Powell submitted, if the NHT was to be treated as a trust and the contributors as beneficiaries the object of the trust would be unascertainable as it would vary from time to time.

[24] Mr. Powell, in further submissions, described as a fallacy the assumption of the claimant that any distribution made by the NHT pursuant to Act No, 7 -2013 would be made from employers' contributions. Based on the resources of the Trust as set out in section 7 of the NHT Act, the Trust would still have funds derived from other sources to make distributions otherwise than from employees' contributions.

[25] Additionally, both Miss Harrison and Mr. Powell submitted that the facts in the authorities relied on by Mr. Wildman in support of the claim are clearly distinguishable from those in this case and are inapplicable to the issues under consideration.

Analysis

[26] The first issue raised in this case is whether or not the NHT Act created a statutory trust for the benefit of the contributors to the Trust. There has never been a single definition of the word 'trust' and in this case each Attorney provided a definition from a different source. For the purpose of this case I will adopt the one supplied by Mr. Wildman from **Parker and Mellows; The Modern Law of Trusts** 9th Edition. It states at paragraph 1-026:

(C) A Judicial Definition

Lewin on Trusts, the other main practitioners' work, refers to a rather more comprehensive definition which was set out by an Australian judge, Mayo J., in *Re Scott*. According to this formulation:

“the word ‘trust’ refers to the duty or aggregate accumulation of obligations that rest upon a person described as trustee. The responsibilities are in relation to property held by him, or under his control. That property he will be compelled by a court in its equitable jurisdiction to administer in the manner lawfully prescribed by the trust instrument, or where there be no specific provision written or oral, or to the extent that such provision is invalid or lacking, in accordance with equitable principles. As a consequence the administration will be in such a manner that the consequential benefits and advantages accrue, not to the trustee, but to the persons called *cestuis que trust*, or beneficiaries if there be any, if not, for some purpose which the law will recognize and enforce. A trustee may be a beneficiary, in which case advantages will accrue in his favour to the extent of his beneficial interest.”

[27] Additionally, in **Mozley and Whiteley's Law Dictionary**, 12th Edition, the following is to be found at page 369:

“In order to create a trust a settlor’s declaration must meet the ‘three certainties’; the intention to create the trust, eg. As expressed in the words of a will, must be clear or certain; the subject matter of the trust, ie the property, must be certain, eg declaring a trust of ‘the bulk of my estate’ is too vague; and finally, the identity of the objects of the trust, ie the beneficiaries of the trust, must be ascertainable.”

[28] Did the use of the word ‘Trust’ in the NHT Act signify an intention by Parliament to create a trust? In **Re Ahmed & Co., (a firm) and Others** Collins, J. at paragraph 111 stated:

“There is no doubt that when the word “trust” is used in a statute it does not necessarily mean a classic private trust. Thus in **Tito v. Waddell** (No. 2) [1977] 1 Ch 106 the relevant Ordinance described the resident commissioner as being paid compensation to hold on trust on behalf of the former owner or owners of a native or natives of the colony subject to such directions as the Secretary of State may from time to time give. Sir Robert Megarry V-C said (at 211) that, when the word “trust” was used one has to look to see whether in the circumstances of the case, a sufficient intention to create a true trust is manifested: “One cannot seize upon the word ‘trust’ and say that this shows that there must therefore be a true trust” [Emphasis added]

[29] On an examination of the NHT Act it is noted that nowhere in the Act are the words “trustee(s)”, “beneficiaries” or “on trust”, words commonly found in trusts, to be found. Significantly, section 5.(1) of the Act states:

5-(1) There shall be established for the purposes of this Act, a Board of Directors of the Trust which shall, subject to the

provisions of this Act, be responsible for the policy and general administration of the affairs of the Trust.

Additionally, by virtue of section 6, the Board is obliged to give effect to directions given by the Minister as to the policy to be followed in the performance of its functions.

[30] Having made these observations I find nothing to indicate that Parliament intended either expressly or by implication to establish a statutory trust. I find that the use of the word “Trust”, which is always capitalized, is to denote the name of the body and not the functions it was established to perform.

[31] I also agree with the Attorneys for the defendants that no certainty of subject matter ie property or certainty of objects ie beneficiaries can be discerned from the Act. Section 7 of the Act which deals with the resources of the Trust indicates an ever changing and unascertainable subject while in section 4, which sets out the functions of the Trust, no ascertainable beneficiaries can be found.

[32] The next issue which arose was whether or not the claimant had *locus standi* to commence the claim. Section 19-(1) of the Constitution states:

“If any person alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.”

[Emphasis added]

[33] The right which the claimant alleges to have been contravened or is likely to be contravened is to be found in section 15 of the Constitution. Section 15-(1) states:

“No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under the provisions of a law that-

- (a) prescribes the principles on which and the manner in which compensation therefor is to be determined and given; and
- (b) secures to any person claiming an interest in or right over such property a right of access to a court for the purpose of-
 - (i) establishing such interest or right (if any);
 - (ii) determining the compensation (if any) to which he is entitled; and
 - (iii) enforcing his right to any such compensation.”

[34] Even if the court should accept that the claimant’s employee contributions to the Trust remains his property, and thus gave him ‘standing’ in order to succeed the claimant would have to show, on a balance of probabilities, that Act 7-2013 would operate in such a way to deprive him of his contributions.

[35] Mr. Wildman, however, submitted that even if the claimant was not a contributor he could still bring the claim as the actions of the defendants threatened the right to property. The case of **Farooque** which was cited in support concerned section 102(2) of the Constitution of the People’s Republic of Bangladesh. It states:

“The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law –

- (a) on the application of any person aggrieved, make an order-
 - (i) directing a person performing any functions in connection with the affairs

- of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or
- (ii) declaring that any act done or proceedings taken by a person performing functions in connection with the affairs of the Republic or of a local authority, has been done or taken without lawful authority and is of no legal effect.”

[36] In that case what was being considered was the meaning to be given to the term “any person aggrieved” in the context of section 102 of the Constitution. The court held that a liberal interpretation approximating to “sufficient interest” was to be given to the expression “any person aggrieved”. It is quite clear that the provisions of section 102 of the Bangladesh Constitution are vastly different from section 19 of the Jamaican Constitution. As the words “any person aggrieved” is not to be found in the Jamaican Constitution, any interpretation ascribed to those words would be inapplicable to our constitutional provisions. Our provisions are, in my view, absolutely clear as to standing.

[37] The case of **Inland Revenue Commissioner** which was also cited by Mr. Wildman is distinguishable. This becomes obvious from the first two sentences of the passage extracted by Mr. Wildman from the judgment of Lord Diplock at page 640. He stated:

“The rules as to “standing” for the purpose of applying for prerogative orders, like most English public law, are not to be found in any statute. They are made by judges, by judges they can be changed; and so they have been over the years to meet the need to preserve the integrity of the

rule of law despite changes in the social structure, methods of government and the extent to which activities of private citizens are controlled by governmental authorities.....”

In that case what was being considered was whether or not the applicants for judicial review of the decision of the IRC to grant “amnesty” to persons who had committed tax fraud had “sufficient interest” to claim the declaration and order sought. Interestingly, their Lordships found that the federation, having failed to show any grounds for believing that the revenue had failed to do its statutory duty, had not shown an interest sufficient in law to justify any further proceedings by the court on its application.

[38] The next issue that needs to be addressed is the effect of Act 7-2013. Even assuming that Parliament had created the NHT as a statutory trust and that the claimant retained property in his contributions could section 2 of the amendment Act be construed as authorizing the compulsory taking of the claimant’s contributions? Firstly, section 2 (1A) states that the Trust may provide financing for fiscal consolidation. The use of the word “may”, to my mind does not suggest compulsion. Secondly, there is nothing contained in section 2 to suggest that any amount provided should be taken from contributions. The answer must therefore be in the negative. Further, in an affidavit of Mr. Martin Miller, then Acting Managing Director of the NHT, which was filed on 25 June 2015, he stated that based on audited reports, even if the NHT were to provide financing pursuant to the provisions of Act 7-2013 the Trust would still have sufficient resources to refund employees’ contributions in accordance with the provisions of section 21 of the NHT Act, and to fulfil its other statutory functions.

[39] Mr. Wildman, in support of his contention that the amendment to the NHT Act constitutes a contravention of section 15 of the Constitution, cited the decision in **Lilleyman and Others v. IRC and Others**. In that case casual workers challenged legislation which required employers to deduct from their salaries a levy of compulsory savings to be used for works of development in the colony and for the issue of bonds therefor repayable with interest after six years. The sums deducted were to be paid over to the Commissioner of Inland Revenue. The court held that this amounted to a

forced loan and that even if the bonds could be considered to be compensation it was not prompt. This is easily distinguishable from the case under consideration in which the challenge was to the use of the contributions, and not to the making of compulsory deductions.

[40] The case of **Trinidad Island-wide Cane Farmers' Association Inc., and A.G. v. Seereenam** was also relied on by Mr. Wildman. That case involved a challenge to legislation which authorized the deduction of monies by way of a cess from sums payable to the applicant for canes sold and delivered by him. This also is a case of compulsory deduction from monies due to the applicant and is also clearly distinguishable from the case now being considered.

[41] Another issue which was raised was whether or not the 2nd Defendant was properly joined in this claim. As it was not necessary to decide this issue in order to determine this case we refrained from doing so.

[42] On 29 March 2016 an affidavit of the claimant was filed. In it he stated that he was a member of a civil lobby group called Citizens' Action for Principles and Integrity (CAPI). He stated that upon becoming aware of the intention amend the NHT Act to facilitate the provision of funding from the NHT towards fiscal consolidation he became concerned. This concern related to the viability of the NHT to fulfil its mandate under the NHT to provide low income housing solutions to its contributors. Consequent on this concern he and CAPI sought legal advice which resulted in this claim being brought.

[43] Based on this affidavit and certain paragraphs of the Particulars of Claim one cannot help but wonder whether or not there was really any genuine belief that the claimant's rights under section 15 of the Constitution were being contravened, or was it merely an attempt to prevent the use of funds from the NHT for fiscal consolidation.

[44] For the reasons stated we found no merit in the submissions made in support of the claim and accordingly dismissed the claim and refused to grant the orders sought. In keeping with the general rule we make no order as to costs.

THOMPSON-JAMES, J

I have read the judgment of Hibbert, J. and agree with the reasoning and findings.

DUNBAR-GREEN, J.

I have also read the judgment of Hibbert, J and concur with his reasoning and findings.

Order

1. The Claim is dismissed and the orders sought are refused.
2. No order as to costs.

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