

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CIVIL DIVISION
3

4 LEGAL AID NO. LACV 185/19 (Cause #G0159/19)
5 &
6 LEGAL AID NO. LACV 194/19 (Cause #G0160/19)
7
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9 IN THE MATTER OF THE LEGAL AID LAW 2015
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11 AND IN THE MATTER OF AN APPLICATION FOR LEGAL AID BY THE APPLICANT
12 - THE CONCERNED CITIZENS GROUP - RELATED TO:
13

14 G 0159/19: IN THE MATTER OF s.98D OF THE REGISTERED LAND LAW;
15 AND IN THE MATTER OF WEST BAY BEACH NORTH, BLOCK
16 11B, PARCEL 61 & WEST BAY BEACH NORTH, BLOCK 11B,
17 PARCEL 87REM1 (SEA FIRE RESORTS (PLAINTIFF)); AND
18

19 G 0160/2019 IN THE MATTER OF s.96 AND s.98D OF THE REGISTERED
20 LAND LAW; AND IN THE MATTER OF WEST BAY BEACH
21 SOUTH, BLOCK 12E, PARCELS 84 & 107 (CAYMAN SHORES
22 DEVELOPMENT (PLAINTIFF))
23

24 AND IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE
25 DIRECTOR OF LEGAL AID PURSUANT TO SECTIONS 4, 5 AND 38 OF THE LEGAL
26 AID LAW (2015 REVISION)
27

28 TAKEN ADMINISTRATIVELY ON THE PAPERS WITHOUT A HEARING
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HEADNOTE

33 *Legal Aid Law (2015 Revision) – Sections 4, 5 and 38 – Sections 3, 4(6) and 5 of*
34 *the Law.*
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JUDGMENT



1 INTRODUCTION

2 1. The Concerned Citizens Group (CCG) appeal against the decision of the Legal Aid
3 Director to refuse a certificate for legal aid for civil proceedings. The civil proceedings
4 relate to a challenge of the decisions of the Central Planning Authority granting
5 developers (Seafire Resorts Ltd and Cayman Shores Development Ltd) planning
6 permission. The decisions impact on four public beach access points which the
7 developers wish to move.

8 THE APPLICATION

9 2. The original refusal of Legal Aid was on 8th January 2020 in relation to G159/2019. In
10 short, that refusal noted that no financial information had been provided by the group,
11 but in any event there was no reasonable prospect of success as the public would still
12 have meaningful access to the beach as a result of the planning decision.

13 3. On 2nd February 2020 there was a request for reconsideration together with further
14 documentation. On 28th February 2020, following reconsideration, Legal Aid was
15 refused. This refusal related to two causes G159/2019 and G160/2019. The bases for
16 the refusal were three-fold:

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- 18
- 19 i. That the Concerned Citizens Group was a registered Not for Profit Organisation
and therefore does not qualify for Legal Aid not being a natural individual person
under s.4 of the Law;
- 20 ii. That the CCG was not a person under s.3, and, moreover, the group had provided
21 no financial information; and
- 22 iii. There was no reasonable prospect of the action succeeding.



1 4. Section 38 of the *Legal Aid Law* provides for an appeal to a judge in chambers where a
2 legal aid certificate is refused. The decision of 28th February 2020, as amended on 29th
3 February, is appealed.

4 5. There is also reference to an appeal against a decision to direct a contribution to legal
5 aid in respect of three of the applicants who are members of the group who have in fact
6 been granted legal aid in their individual capacity. I do not have the necessary
7 information to hand to be able to deal with that appeal. This third case is best dealt
8 with by the Court that granted legal aid to the individuals.

9 6. Therefore, this decision is confined to the Concerned Citizens Group (the “CCG”).

10 **THE GROUNDS OF APPEAL**

11 7. The Grounds of Appeal are detailed and the documentation accompanying them is
12 substantial. They can be distilled essentially to the following:

13 i. The Director erred:

14 (a) in not accepting the Group’s contention that the matter was in the public
15 interest;

16 (b) in failing to attach sufficient weight to the merits and the documents
17 produced and law referred to by the Group;

18 (c) in finding that the members of the group could act for themselves without
19 legal assistance;





(d) in failing to give proper consideration to the position of non-profit organisations and the fact that lawyers in the Cayman hardly assist such organisations.

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4 THE LAW

5 8. Section 3 of the *Legal Aid Law* 2015 states:

6 “3. *The purpose of this Law is to provide legal aid to persons in respect of*
7 *civil and criminal matters where those persons are financially unable to*
8 *secure legal services from their own resources.”*

9 9. Section 4(6) of the Law states:

10 “(6) *Subject to sections 5, 17 and 19, legal aid may be granted to individual*
11 *natural persons of the following categories -*
12 *(a) ...;*
13 *(b) ...;*
14 *(c) ...;*
15 *(d) ...; and*
16 *(e) parties in civil proceedings and civil appeals, including legal*
17 *guardians, guardians ad litem or persons who have power of*
18 *attorney to act on behalf of children and persons under a physical*
19 *or mental disability.”*

20 10. Section 5 of the Law states:

21 “5. *Legal aid in civil proceedings may only be granted if the Director is*
22 *satisfied, after making inquiries under section 16, that the applicant*
23 *appears to have a reasonable prospect of succeeding on the merits of the*
24 *case.”*

25 DECISION

26 11. The grounds fail to deal with the first two points in the refusal certificate, namely who
27 qualifies for legal aid. They merely highlight apparent public outrage expressed about
28 the lack of access for legal aid, particularly in cases where there is a public interest.
29 This is not a proper basis for the Director to make a decision. The Director has to abide

1 by the law and act within her powers. In my judgment she has correctly interpreted the
2 law. Moreover, although the applicants refer to the impecuniosity of their group, again
3 they do not provide any figures and thus the Director would be unable to ascertain
4 under s.3 whether the applicants, if they had been *prima facie* eligible, lacked the
5 necessary resources.

6 12. Having found that the Director was correct in her interpretation of the law and that the
7 CCG does not qualify for Legal Aid, I need not consider the merits argument in any
8 detail. I merely make the observation that the submissions on the merits amount to
9 little more than a disagreement with the Director's assessment. Such disagreement
10 does not mean that the Director is wrong. I also note from reading the papers that the
11 members of the group are more than capable of mounting their arguments. Moreover,
12 as three of the four individuals who were signatory to the appeal application already
13 have Legal Aid, it would not be an appropriate use of scarce public funds to allow any
14 kind of duplication.

15 13. It follows from the above, that these two appeals are dismissed.

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19 Dated this the 28th August 2020

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23 **Dame Linda Dobbs**
24 **Acting Judge of the Grand Court**

