

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 995/15

In the matter of:

GEORGES CHEN FEE AH YAN, of "FORUM DES CITOYENS LIBRES"

&

BRUNO SAVRIMOOTOO, of "MOUVEMENT VAGUE DIVAN BORLAMER"

Appellants

v.

THE DISTRICT COUNCIL OF GRAND PORT

Respondent

In the presence of:

LE CHALAND LIMITED

Co-Respondent

RULING:

The appeal:

1. The Appellants have lodged an appeal (dated 30 September 2014) against the decision of the Respondent for having approved an application for a Building and Land Use Permit in favour of "Le Chaland Hotel Ltd." for the construction of the first phase of a hotel known as 'Le Chaland Resort Hotel' (dated 23 September 2014).
2. A perusal of the documents annexed to the notice of appeal shows the letter addressed to Appellant No.1, referring to the objection made by him to the proposed project, and informing him of the decision of the Council to approve the

application for BLUP, with conditions. No letter notifying Appellant No.2 has been filed. Nonetheless the two Appellants have lodged the present appeal in their capacity as objectors to the proposed development by Le Chaland Hotel Ltd.

**The proposed amendments:**

3. The Appellants subsequently made a motion to amend the notice of appeal. The amendment sought was firstly to amend the name of Appellant No. 1 to add 'Chin Fee' to the name. The initial motion was to amend the capacity of the appellants, namely by adding after the name George Ah Yan, the words 'herein acting in his own personal name and as 'porte parole', a similar motion was made in respect of Appellant No.2. The Respondent objected to this proposed amendment. The proposed amendment, as originally formulated, was then substituted by an amendment to add "Chin Fee" to the name of Appellant No.1. The Respondent as well as Le Chaland Hotel Ltd. did not object to this and the motion was granted.
4. It is the second part of the motion that calls for our attention, having been resisted. The Appellants sought to add 'Le Chaland Hotel Ltd' (the holder of the BLUP) as Co-Respondent. Counsel appearing for this company raised objection to this amendment on the following grounds:
  - (a) An appeal was lodged before the Tribunal outside the presence of the 'Co-Respondent' within the mandatory delay therefor and the appeal was not served upon the Co-Respondent.
  - (b) A notice dated 23 October 2015 was served on the Co-Respondent outside the statutory delay, from which it appears that the Co-Respondent has been joined as a party to the appeal, and this, outside the delay.
  - (c) The Co-Respondent objects to the appeal proceeding any further and moved that it be set aside in as much as the Appellants did not join the Co-Respondent as a party to the appeal within the mandatory delay and/or the appeal has been served upon it outside the mandatory delay therefore.

We have considered the submissions made on behalf of the parties.

5. A first observation is that the preliminary objection refers to Le Chaland Hotel Ltd. as being the 'Co-Respondent' both in the heading and the body of the preliminary objection filed, whilst disputing that it be joined as a Co-Respondent. Counsel attempted to explain this by the fact that copy of the proceedings were obtained at a later stage. Yet, we do not note any motion made to amend this.

6. Two issues are raised in this objection: firstly whether 'Le Chaland Hotel Ltd.' can be joined as a party and whether this can be done outside 'the mandatory delay therefor'.

### **Can 'Le Chaland Ltd.' be joined as party?**

7. The notice of appeal lodged on the 30 September 2015 makes no mention of 'Le Chaland Hotel Limited.' as being the Co-Respondent. Yet the grounds of appeal, filed as Annex B to the notice, refer to Le Chaland Hotel Limited as being the Co-Respondent. This was served on the latter party on the 26<sup>th</sup> October. The delay will be addressed below.
8. On the principle of joining Le Chaland Ltd., we find that it is the normal course of action to put into cause the permit holder as an interested party in this appeal. In fact it has been the *cursus* before this Tribunal to invite Appellants, who may have put into cause only the decision-making authority, to bring in all interested parties. This can encompass permit holders, objectors or any authority which may have a say in the matter subject of the appeal. This is in line with the *audi alteram partem* principle (no man can be condemned unheard) and the observance of the principles of natural justice. (Re- Public Service Commission v. The Public Bodied Appeal Tribunal 2011 (SCJ 382).
9. By putting into cause Le Chaland Hotel Ltd., the Appellant is giving this entity the opportunity to put in its version, and there would, thus, be no decision taken behind its back which may have an impact on its activities. By objecting to be joined as a party, Le Chaland Hotel Ltd. places itself outside the realm of the check of the propriety of the Respondent's decision by the appellate body (i.e. this Tribunal).
10. Furthermore, we find it questionable that Le Chaland Hotel Ltd., on one hand, objects to be joined as a party and, on the other, moves that the appeal be set aside. In what capacity does it do so? Any bystander, who is not party to a case, cannot whilst operating outside the proceedings of a case, endeavour to put a halt to those proceedings.

### **The record**

11. The record shows that a motion was made on behalf of the Appellant to amend the notice of appeal, to which the Respondent had moved to take a stand (page 14 of the brief).

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The Respondent objected to the proposed amendment on the ground that this amounts to the introduction of new parties after the delay to appeal. However, the Appellant did not insist on the proposed amendment to add 'acting in their own names and as porte parole of 'Forum des Citoyens Libres' and ' Mouvement Vag Divan Borlamer' respectively, but stated that the proposed amendment is only in respect of the name of Appellant No.1 to add the name of Chin Fee. This was not objected to and the amended was granted.

12. The contention that remained was the joining of Le Chaland Hotel Limited. as Co-Respondent. The second limb of the motion (page 13 of the brief) relates to a proposed amendment on behalf of the Appellants to add 'as per the grounds of appeal', as Co-Respondent, Le Chaland Hotel Limited. The matter was set for 'fresh service on the Co-Respondent' and for the stand of the Respondent.

Being given that the notice of appeal, in its annexure, referred to Le Chaland Hotel Limited as Co-Respondent, the entry made for "FS on Co-Respondent" was a mere continuation of this appellation of the parties. Le Chaland Hotel Limited was to be notified of the appeal by the Appellant. At any rate, on the basis established practice before this Tribunal (as stated above), this entity would have to be brought in/ or caused to be brought into the picture, being an interested party.

### The question of delay

13. The crux of the objection of the Appellants is based on the notice served outside the delay of twenty one days, thus the Co-Respondent was 'joined' as a party outside the mandatory delay.

The procedure to lodge an appeal before the ELAT is laid down in section 5 sub-section (4) (a) of the ELAT Act 2012. This reads as follows: *Every appeal under section 4 (1) shall, subject to paragraph (b), be brought before the Tribunal by depositing with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days from the date of the decision under reference being notified to the party wishing to appeal*".

Sub-section 4 (b), which also provides for a delay, applies in cases where the decision is not required to be notified to the party wishing to appeal, and here, the delay is of 42 days which runs from the date public notice of the decision is given, This provision has no application in the present matter.

n b 14. Section 5 (4) (a) (supra) relates to 21 days delay to be observed by the Appellant who wishes to lodge an appeal against a decision of the Respondent.

We do not read in this section that this delay is applicable for the service of the notice of appeal on interested parties. True it is that the logical and convenient approach would have been to join all interested parties at the very outset, namely at the time of lodging the appeal. Nonetheless, this Tribunal has been faced on innumerable occasions with Appellants only come to know about objectors, or the identity of the permit holders, or other interested parties when the matter is called at formal stage before the Tribunal.

The approach taken by this Tribunal has been to allow, and sometimes requests the Appellants to put such and such parties into cause. In many cases, this is done after a period of twenty one days has lapsed.

15. The above approach is dictated firstly by the power granted by the ELAT Act to this Tribunal to conduct its proceedings "with as little formality and technicality as possible" (section 5(3)(b) ELAT Act 2012), and secondly, by the 'Audi Alteram Partem Rule' applied by this Tribunal, supporting the necessity to give all interested parties the opportunity to have a say in the matter so that no decision that may affect them in whatever manner be taken 'behind their back'.

16. We take into consideration the point raised that section 5(3) of the ELAT Act does not give a licence to the Tribunal to operate in a manner where the procedure adopted can which can vary, leading to uncertainty as to the delay.

However, as stated above, section 5(4) of the ELAT Act 2012 lays the delay of 21 days in respect of the Appellant's appeal against the Respondent. It is not a simplistic reading of this provision that leads us not to read more than what this section states. In fact, a reading of the whole Act shows that there is a departure from technicality and formality (supra) and there is the wider power given by the Legislator in section 5(3)(c), which provides that "Any proceedings of the Tribunal shall "not preclude an endeavour ...to effect an amicable settlement between the parties".

In the spirit of this approach, we find that it is necessary to have all interested parties present before this Tribunal before embarking into the assessment of the planning merits of the decision of the Respondent. There is no legal impediment to allowing the permit holder (Le Chaland Hotel Limited) being brought in after the delay of 21 days.

17. In this respect, the case of Lagesse v. Town & Country Planning Board 2000 SCJ 235 is distinguished.

In the Lagesse case, the Supreme Court allowed the appeal on the ground that it is the local authority, body which it qualified as being '*the authority which wants to retain control of the qualitative and quantitative aspects of land development under its jurisdiction*' that had not been put into cause whilst the appeal was directed against the Town and Country Planning Board. On the question of delay, the Court stated that "*on the authority of Lagesse v Commissioner of Income tax 1991 MR 46, we find that when the Appellants decided to put into cause the Council, they were outside the statutory delay of one month provided under Section 25(3) of the Act*".

Here, it is not the authority that grants/ or refuses the permit that has not been put into cause within 21 days. It is the permit holder. Case law has time and again emphasized that all interested parties have to be put into cause. This is what the Appellants seek to do. In addition, the provision for the statutory delay referred to in Lagesse differs from the present appeal, where, as stated above, section 5(4)(a) ELAT Act does not specifically provide for the delay quoad interested parties.

18. The case of Nuckchady & Ors. v. Town and Country Planning Board & Ors. 2012 SCJ 152 is also distinguished. The case of Nuckchady applied the principle laid down in Lagesse and held that failure to comply with the statutory delay is fatal. The legislative provisions of the ELAT Act 2012 cannot be read within the restrictions provided in another enactment, namely the Town and Country Planning Act, which was the relevant Act in the Lagesse case.

19. What is sought by the Appellants is to bring before this Tribunal all interested parties. Let the Tribunal hear what they all have to say on the matter. Technicality in procedures should not dictate substance, the more so that it has been the intention of the Legislator, expressed in no uncertain terms, that the proceedings of this Tribunal are to be conducted with as little formality and technicality as possible. The service of the notice of appeal on Le Chaland Limited after the period of 21 days is not a bar to the present appeal.

20. As regards, the preliminary objection raised by the Respondent, it has no reason to be a live one because the Respondent no longer objected to the motion to amend the statement of case as reformulated in the course of the hearing. Although counsel for the Respondent joined in the submission of Le Chaland Hotel Limited, we note that the written submissions filed make no reference whatsoever to the points raised by the latter, namely in relation to delay.

21. For all the reasons given above, the preliminary objection raised by Le Chaland Hotel Limited is set aside.

the appeal is to proceed on its merits against the decision of the Respondent, with Le Chaland Hotel Limited joined as Co-Respondent.

Delivered on 29<sup>th</sup> January 2016 by:

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Mrs. V. Bhadain  
Chairperson

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Prof. T. Ramjeawon  
Assessor

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Mr. P. Manna  
Assessor