

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Public Law Division
2020/PUB/jrv/FP/00005**

**IN THE MATTER OF an application for
for Judicial Review**

**BETWEEN
THE QUEEN
AND**



**(1) The Hon ROMAULD FERREIRA MP
Minister of the Environment and Housing**

**(2) ROCHELLE NEWBOLD
Director of Environmental Protection and Planning**

**(3) THE ATTORNEY GENERAL
(In a representative capacity for the Governor General)**

(4) THE TOWN PLANNING COMMITTEE

Respondents

Ex Parte

**(1) WATERKEEPERS BAHAMAS LTD
(2) COALITION TO PROTECT CLIFTON BAY**

Applicants

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mr. Frederick Smith, QC along with Mr. Garth Phillippe, Ms. Ruth Jordan and Keath Smith for the Applicants
Mr. Aiden Casey, QC along with Mr. Franklyn Williams, Mr. David Higgins and Mrs. Kayla Green-Smith for the Respondents
Ms. Clare Montgomery, QC along with Mr. Leif Farquharson and Mr. Adrian Hunt for the Intended Interveners

RULING

1. The application before the Court is made by Summons filed December 10, 2020 on behalf of Bahamas Petroleum Company Plc ("**BPC**") and Bahamas Offshore Petroleum Limited ("**BOP**"), pursuant to Orders 15, Rule 6(2)(b) and 31A, Rule 18(2)(s) of the Rules of the Supreme Court 1978 ("**RSC**") and the inherent jurisdiction of the Court for leave to intervene in the action and be joined as the Fourth and Fifth Respondents and that the costs of this application be costs in the cause.
2. The Applicants, Waterkeepers Bahamas Ltd and Coalition to Protect Clifton Bay, oppose the intended interveners application to be joined.
3. The preliminary point made by Counsel for the Applicants, Mr. Fred Smith, QC that the Intended Interveners Summons was premature is now moot as the Originating Notice of Motion was served on BOP on January 15, 2021, the Applicants having accepted that it is a person directly affected.
4. The brief facts are that following an application to the Court the Applicants were granted leave to commence judicial review proceedings as against the named Respondents in this action on January 6, 2021. Additionally, the Court granted the Applicants leave to join the Town Planning Committee as a Respondent and leave to amend their pleadings to reflect the same. However, the Applicants' application for a stay of the effect of the decisions challenged by them in these proceedings was refused by the Court.
5. The Intended Interveners rely on their Skeleton Arguments filed on December, 22, 2020 and dated January 8, 2021 and the First Affidavit of Simon Potter in support of their application. The Applicants rely on its Submissions filed January 12, 2021 in opposition of the application to intervene.

The Law

6. Order 15, Rule 6(2)(b) states:-
“(2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —
(b) order any of the following persons to be added as a party, namely —
(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter, but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised."

7. Order 31A, Rule 18(2)(s) of the RSC states:-

"18.

(2) Except where these Rules provide otherwise, the Court may —

(s) take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case."

8. Order 53, Rule 5(3) of the RSC states:-

"(3) **The notice of motion or summons shall be served on all persons directly affected** and where it relates to any proceedings in or before a magistrates court or tribunal and the object of the application is either to compel the magistrates court or tribunal or an officer of the magistrates court or tribunal to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons shall also be served on the Clerk or Registrar of the magistrates court or tribunal and, where any objection to the conduct of the magistrate or tribunal is to be made, on the magistrate or the president of the tribunal." (**emphasis mine**)

9. Order 53, Rule 9(1) of the RSC states:-

"(1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons."

Submissions

10. Counsel for the Intended Interveners, Ms. Clare Montgomery, QC submits, in part, that as leave has been granted to the Applicants to apply for judicial review, the proceedings are now governed by Order 53 of the RSC. It is her submission that the Intended Interveners will be "directly affected" by the application for judicial review pursuant to Order 53, Rule 5(3) and must be served with the notice of motion of the application for judicial review and may therefore be joined as Respondents "**as of right**". She submits that service

- renders the party a Respondent and gives the Respondent important procedural rights such as a right to file evidence, a right to be heard, a right to seek disclosure, a right to seek security for costs and a right to seek leave to appeal, which are all significant rights.
11. Ms. Montgomery, QC refers the Court to the relevant provisions of Order 53 in particular, Order 53, Rule 3 (1), Order 53, Rule 5(2), (3), (5), (6), (7) and Order 53, Rule 9(1) in support of her submission. In her submissions she makes the distinction between **"interested parties"** and interveners and refers the Court to the case of **R v Rent Officer Service ex p Muldoon** [1996] 1 WLR 1103 in support. She also submits that where an applicant seeks certiorari of a permission or license granted by a public body the beneficiary of such permission or license is invariably directly affected by the application and is entitled (absent an order to the contrary) to participate as an interested party and refers the Court to the cases of **Save Guana Cay Reef Association Ltd v The Queen** (SCCiv App No 70 of 2006), **Bimini Blue Coalition Ltd v The Prime Minister** (SCCiv App o 35 of 2014), **Responsible Development for Abaco (RDA) Ltd v The Prime Minister** (SCCiv App No. 248 of 2014) and **BACONGO v Department of the Environment of Belize** [2003] 1 WLR 2839 and states that these cases establish that Developers whose financial interest may be affected, even if the challenge is to governmental decision-making, they are to be served as Respondents. She further submits that the requirement to join directly affected persons as Respondents to applications for judicial review is independent of the Court's power under Order 53 Rule 9(1) to hear from an intervener. It is Ms. Montgomery's, QC submission that that provision caters for persons who are not "directly affected" but who are proper persons to be heard and that provision cannot be relied upon to circumvent the mandatory requirement under Rule 5(3) to serve the notice of motion on all directly affected persons. Ms. Montgomery, QC submits that the Affidavit evidence of Mr. Simon Potter shows the ways in which BPC/BOP will be directly affected by the application for judicial review.
12. It is also her submission that the powers under Order 15 of the RSC should be exercised because as far as the Intended Interveners are concerned the Applicants application for Judicial Review seeks to quash the decisions to grant licenses which one of the Intended Interveners, BOP holds which are plainly valuable commodities. She also submits that the other Intended Intervener, BPC's rights are equally engaged in these proceedings as BOP and that BPC is directly affected by a grant of certiorari to quash the EA which gives BPC the right to carry out the drilling operation.

13. Mr. Fred Smith, QC submits, in part, that Order 15, Rule 6(2)(b) does not apply to judicial review proceedings as Order 53 provides a **"self-contained framework"** for the participation of third parties. Alternatively, he submits that the test in Order 15, Rule 6(2)(b) is not satisfied as there are no matters in dispute in these judicial review proceedings between BCP/BOP and any other party and that any said matters in dispute between these parties would not be resolved by way of judicial review proceedings (if one existed). He also submits that there are no other questions or issues between BPC/BOP and a party to the proceedings arising out of the relief or remedy claimed that could or ought to be determined between BPC/BOP and that party in the proceedings. Mr. Smith, QC further submits that even if there was such an issue or question it would not be capable of determination in these proceedings and private civil proceedings would need to be brought. It is his submission that the fact that BPC/BOP may be affected persons in that they stand to be commercially affected by the outcome of these proceedings is not a valid ground for joining a party.
14. Mr. Smith, QC also submits that BPC/BOP's reliance on Order 31A, Rule 18(2)(s) does not apply as Order 15, Rule 6(2) makes provisions for particular circumstances in which the Court may order joinder of parties; Order 53, Rule 5(3) makes provision for the service of "directly affected" parties in judicial review proceedings and Order 53, Rule 9(1) makes provision for third parties 'right to be heard' in judicial review proceedings.
15. It is his submission that judicial review proceedings are conferred by a special jurisdiction and Order 15, Rule 6 and Order 31A, Rule 18(2)(s) cannot be used to allow third parties who stand to be affected by the outcome of judicial review but with no legal dispute capable of being determined to be allowed to join as full parties.

Analysis

16. As the Originating Notice of Motion has been served on the named Respondents and BOP, one of the Intended Interveners, the Applicants' preliminary point is moot. Therefore, the Court at this juncture is primarily concerned with determining whether the Intended Interveners, BPC and BOP should be joined as named Respondents to these proceedings pursuant to Order 15, Rule 6(2)(b), Order 31A, Rule 18(2)(s) of the RSC and or the Court's inherent jurisdiction and further, whether service upon them of the Notice of Motion pursuant to Order 53 Rule 5 (3) entitles them to be joined as Respondents as of right.
17. The Intended Interveners maintain that both BPC and BOP are parties directly affected as stated by Mr. Simon Potter in his First Affidavit filed December 11, 2020 at paragraphs 1 and 7, whereby he establishes the relationship between BPC and BOP. In particular he

states that BPC is incorporated in the Isle of Man and is registered as a publicly traded company and currently has onshore oil production in Trinidad and Tobago and Suriname along with The Bahamas. He also states that BOP is a subsidiary of BPC and BOP holds the licences which the Applicants now challenge. Additionally, Mr. Potter exhibits at Tab 1 of his First Affidavit a copy of the Environmental Authorisation granted to BPC by the 1st Respondent.

18. The Court's jurisdiction under Order 15, Rule 6 is entirely discretionary and the said provisions confer a wide jurisdiction on the Court. The White Book, Volume 1, commentary at page 225, para 15/6/8 states "Under this rule...a person may be added as defendant against the wishes of the plaintiff either on the application of the defendant or on his own intervention, or in rare cases by the Court of its own motion."
19. In considering whether to join a party to the proceedings, the Court must determine that joining the Intended Interveners is (a) necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon **or** (b) where there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter. Taking the said provisions into consideration only one of these conditions needs to be satisfied before the Court.
20. The matter before the Court is for a review of the decision-making process however the Applicants by way of their application and their Affidavit evidence refer to the actions of both BPC and BOP, the Intended Interveners during and after the decision-making process. The Applicants in their application for judicial review seek relief in the form of certiorari of each of the said decisions and declaratory relief to which BPC and BOP, the Intended Interveners will be directly affected. Moreover, the Applicants own application for a stay of the effect of the decisions pending the determination of the judicial review proceedings which would have resulted in a halt of the drilling by BPC and its contractors to my mind, demonstrates to the Court that the Applicants accept that an outcome in their favour in these proceedings would directly affect BPC and BOP, the Intended Interveners.
21. Ms. Montgomery, QC during the hearing submitted that once the Intended Interveners were served with the Originating Notice of Motion pursuant to Order 53 of the RSC they would become Respondents "as of right". However, I do not accept her submission in this regard, as to my mind, the service of the said documents only puts a party on notice of the proceedings and **does** not join them as a named party as of right. Nonetheless, the

- cases relied upon by Ms. Montgomery, QC in support of her submissions are instructive in particular the case of **Beckford and others v Registrar of Trade Unions of the Commonwealth of the Bahamas and others** SCCivApp No. 273 of 2014 whereby Justice of Appeal Adderley affirmed that the Court had the power to join the parties under Order 15, Rule 6(2) of the RSC contrary to the grounds of appeals advanced in that action.
22. Additionally, I do not accept Mr. Smith's, QC submission that Order 15, Rule 6(2)(b) does not apply to judicial review proceedings as Order 53 already provides a self-contained framework for the participation of third parties. While Order 53 contains provisions for directly affected persons to be served with the originating motion and persons in opposition of the motion to be heard notwithstanding they had not been served with the same, I find that there is nothing in Order 53 that prevents any party from relying on any of the provisions contained in the RSC and no legal authority has been provided citing the same.
23. Moreover, while I accept that Order 31A, Rule 18(2)(s) of the RSC permits the Court to exercise a wide discretion relating to its case management powers, the provision itself is contingent on there not being any other provision made for the relief sought i.e. "Except where these Rules provide otherwise, the Court may — ." In the instant case, Order 15 of the RSC makes provision for the relief sought by the Intended Interveners in this application and as such there is no need for the Court to exercise its discretion under Order 31A of the RSC.
24. Therefore, having read the submissions and having heard the parties in respect of this Application and reviewed the relevant Rules of the Supreme Court and case law, I accept the position of the Intended Interveners, BPC and BOP and their submissions in part that they will be directly affected by these proceedings and that as there exists a question or issue arising out of or relating to or connected to the relief or remedy claimed by the Applicants it would be just and convenient to determine as between the Intended Interveners and the other parties to the action. Consequently, I am going to exercise my discretion and grant leave for BPC and BOP to be joined as the 5th and 6th Respondents in this action.
25. As it relates to the issue of costs, I order that costs will be in the cause.

Dated this 22th day of January, A. D. 2021


Petra M. Hanna-Adderley