IN THE COURT OF APPEAL

TURKS AND CAICOS ISLANDS

Appeal No. CL-AP 15/22

From CL 130/14

BETWEEN:

THE ATTORNEY GENERAL

Applicant

-and-

GILBERT SELVER

Respondent

BEFORE: **The Hon. Mr Justice K. Neville Adderley, JA**

APPEARANCES: **Ms Clemar Hippolyte for the Applicant**
Mr George C Missick for the Respondent

Date Heard: **4 August 2022**

Date Delivered: **31 August 2022**

JUDGMENT

Adderley, JA

[1]. This is the very first application for an extension of time in which to appeal, made to the Court, since Parliament bestowed that jurisdiction upon the Court in May of this year. It had been settled law that this Court had no power to grant such an extension beyond the 28 days conferred by s.15 of the Court of Appeal Ordinance. See for

example **Inversiones v Hape**[1], **AG v Robinson and Bishop**[2] and more recently **Outten v Missick & Anor**[3]**.**

[2]. In **Outten** Morrison P, reiterated the call made by the immediate past President, Sir Elliott Mottley, in **Robinson** that there was a need in the public interest for Parliament to confer the power on the Court to extend the time for bringing a civil appeal.

[3]. That power was conferred by way of an amendment to the Court of Appeal Ordinance which came into operation on 16 May 2022[4]. Section 15 was amended by **s.4 of the Court of Appeal (Amendment) Ordinance** which repealed s.15(1) and substituted the following:

> "(1) In the case of an appeal from any judgment, decree or order of the Supreme Court in the exercise of its civil jurisdiction, the appeal shall be brought by the appellant giving notice in writing, within twenty-eight days of the judgment, decree or order from which the appeal is made, to the Registrar of the Supreme Court, and to the opposite party or parties in the action, of his intention to appeal and also of the grounds of his appeal:
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> **Provided that a Judge of the Court may at any time extend the time within which notice of appeal may be given."** (emphasis added)

[4]. The words emphasized in bold letters are the ones added by the amendment and gives jurisdiction to a single judge to hear an application for extension of time.

[5]. This application relates to the appeal from a judgment of the Supreme Court in this matter handed down on 29 April 2022. The Notice of Appeal should have been filed and a copy served on the Respondent by 27 May 2022 which was 28 days after the judgment was handed down, but it was not filed and served until 9 June 2022.

[1] [2000] TCACA 2, Civil Appeal 01/2000
[2] [2014] TCACA 4
[3] [2022] TCACA 3, Civil Appeal 04/2021
[4] Legal Notice 32 of 2022

THE BACKGROUND

[6]. The Respondent in or about the year 2000 applied for a commercial Conditional Purchase Lease ("CPL") from TCIG of what is now Parcel 60602/429 "Kew Town" upon payment of certain sums and performing certain obligations. In or about the year 2001 the Respondent applied for a second residential ("CPL") over what is now Parcel 60602/430 "Kew Town" at a certain price and on certain conditions.

[7]. A letter dated 4 February 2003 was sent to him from TCIG confirming the arrangement. As far as I can make out from the judgment he took up occupation of the commercial parcel without signing a lease or paying the sums offered. Neither did he pay mesne profits during his period of occupancy.

[8]. A letter dated 29 October 2008 from TCIG rescinded its 2001 decision on the residential CPL and offered him the freehold title to that Parcel at a higher price and on different terms. He then in 2013, after the Crown Lands Ordinance came into effect and set different rules for disposal of Crown Land, took up the 2008 offer and tendered the sum originally offered. However, TCIG refused, maintaining the original offer had expired. He also claimed a declaration that he was entitled to an easement over an adjacent parcel now 60602/431.

[9]. TCIG maintained that by the time he took up the lease many years later the first offer on the residential CPL had expired and the Respondent had to satisfy the new conditions if he wanted the property. Regarding his commercial CPL application, TCIG submits that he entered as a trespasser and never ceased to be trespasser. TCIG counterclaimed for possession, damages, an order for pulling down and removal, and costs.

[10]. The Learned Judge ("the judge") ruled in favour of the Respondent and dismissed TCIG's counterclaim.

[11]. As the time for appealing has passed TCIG seeks an extension of time in which to appeal the judge's decision.

THE LAW

[12]. Being the first application after the amendment, as pointed out by Ms Hippolyte, there are not yet precedents in this jurisdiction. It therefore falls to the Court to consider what principles should apply and to apply those principles to the facts of this particular case.

[13]. Ms Hippolyte helpfully provided a large number of English and other authorities which she commended to the Court for consideration and adoption if they were considered relevant.

[14]. Mr Missick correctly observed that generally the authorities commended by Ms Hippolyte were post CPR, and did not deal with applications for extension of time to appeal, but mainly extensions to deal with various case management matters. He submitted that the post CPR tests were not relevant and opined that the test was wider.

[15]. Without citing the authorities on which he relied Mr Missick submitted what he said were underlying principles which should guide a court when exercising its discretion to grant an extension of time.

[16]. Both parties relied on **Mc Donald v Rose** [2019] EWCA Civ 4 where Lord Justice Underhill at paragraph 26 referred to the application to extend time as an application for relief from sanctions under the CPR where he said:

> "26. The next question is whether or not this court should extend time. It is common ground that this is an application for relief from sanctions, such that the court needs to consider the three elements identified in *Denton v T.H. White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926, namely:
>
> (i) the seriousness and the significance of the failure to comply with the rules;
> (ii) why the default occurred;

(iii) an evaluation of all the circumstances of the case, so as to enable the court to deal justly with the application."

This would be the case where a judge imposes sanctions for failure to comply with a rule as contained, for example, in Order 31A (Case management) of The Bahamas' rules, or the rule itself imposes sanctions for non-compliance with the relevant provision. That is not the case here.

[17]. Near the end of his submissions Mr Missick made a passing reference to **Johnson v Johnson**[5], a case which he had found on The Bahamas' Court of Appeal Website, which he submitted could be used as a persuasive authority but just having found it, it appeared that it may not have been made available to Ms Hippolyte.

[18]. Among the authorities cited by Ms Hippolyte was **Quillen and others v Harney, Westwood & Riegels (No 1)**[6] from the Court of Appeal of the Eastern Caribbean. That was an application under Ord 3, r 5 of the Rules of the Supreme Court 1970 [Eastern Caribbean States] for leave to extend time in which to apply for leave to appeal. In reading from the headnote, the Court (Byron Acting CJ, Satrohan Singh and Redhead JJA) held that "…*in exercising its unfettered discretion in such a case, the matters to be considered by the court are (1) the length of the delay, (2) the reasons for the delay, (3) the chances of the appeal succeeding if the application is granted and (4) the degree of prejudice to the respondent if the application is granted. The discretion should be exercised flexibly with regards to the facts of the particular case and with the main concern to ensure justice to both parties…*"

[19]. These are the same factors determined by the Court of Appeal of The Bahamas in **Johnson**. That was an application under rule 11 of the Court of Appeal Rules 2005 for leave to appeal notwithstanding 8 days had passed after the six-week deadline mandated by rule 11(1)(b) of the Court of Appeal Rules to file an appeal.

[5] SCCivApp & CAIS No 20 of 2015
[6] 1999 58 WIR 143

[20]. Crane-Scott JA speaking for the panel (Allen P, Isaacs and Crane-Scott JJA) distinguished the English authority of **Sayers v Clarke Walker (a firm)** [2002] EWCA Civ 645 cited there at the bar and also here by Ms Hippolyte as having obviously been considered against the background of the 1999 Civil Procedure Rules of England. She noted that Brooke LJ referred to the philosophy underpinning the 1999 CPR, which requires that court orders and practice directions be strictly obeyed on pain of the imposition of sanctions. On that basis, he held that the same considerations set out in CPR 3.9 which apply when a court is considering an application for relief from sanctions should apply to applications for extension of time. Crane-Scott JA then observed that Brooke LJ then went on to recite the same checklist of items set out in the English CPR 3.9.

[21]. The Bahamas Court of Appeal concluded that the post CPR English cases in relation to applications for extension of time are therefore not a basis for persuasive authority in The Bahamas. The Court then, at paragraph 12, set out the principles which apply in The Bahamas:

> "12. In this jurisdiction, the settled approach of the Court of Appeal to the exercise of its discretion under rule 9 to grant (or deny) an extension of time has been for the Court to have regard to the four factors identified in the judgment of Griffiths LJ in **CM Van Stillevoldt BV v. El Carriers Inc** [1983] 1 All ER 699. The factors were subsequently applied in numerous pre-CPR English authorities, notably **Palata Investments Ltd. v. Burt & Sinfield Ltd.** [1985] 2 All ER 517, **Norwich and Peterborough Building Society v. Steed** [1991] 2 All ER 800 and **Mallory v. Butler** [1991] 2 All ER 889."

[22]. The factors identified by Griffiths LJ in the leading authority of **CM Van Stillevoldt BV** are:

1) The length of the delay.
2) The reasons for the delay.
3) The chances of the appeal succeeding if time for appealing is extended.
4) The degree of prejudice to the potential respondent if the application is granted.

[23]. These are the same principles enunciated in **Quillen** by the Court of Appeal of the Eastern Caribbean, which at the time was still operating under the old Rules of the Supreme Court.

[24]. In his introduction to the Turks and Caicos Civil Rules 2000 dated February 2000 now in effect, Ground CJ stated that they are based upon the Rules of the English Supreme Court as they stood at 1 January 1999.

[25]. By Rule 4 of the Court of Appeal (Practice and Procedure) Rules, the Court of Appeal Rules of The Bahamas apply mutatis mutandis to appeals from the Supreme Court of The Turks and Caicos Court of Appeal. It follows that **Quillen** and **Johnson** are persuasive authorities for The Turks and Caicos Islands.

[26]. The Pre-CPR practice is summarized in the 1999 edition of the Supreme Court Practice ("the White Book") at paragraph 59/4/17. Relevant excerpts are set out below:

> "It is entirely in the discretion of the Court to grant or refuse an extension of time. The factors which are normally taken into account in deciding whether to grant an extension of time for serving a notice of appeal are (1) the length of delay; (2) the reasons for the delay; (3) the chances of the appeal succeeding if time for appealing is extended; and (4) the degree of prejudice to the potential respondent if the application is granted (see C. M. Stillevoldt BV v El Carriers Inc [1983] 1 W.L.R. 297; [1983] 1 ALL E.R. 699…
>
> Where the delay in serving notice of appeal is short and there is an acceptable excuse for it, an extension of time will not be refused on the basis of the merits of the intended appeal unless the appeal is hopeless: Palata Investments Ltd v Burt & Sinfield Ltd [1985] 1 W.L.R. 942; [1985] 2 ALL E.R. 517, CA. In Norwich & Peterborough Building Society v Steed [1991] 1 W.L.R. 449 and Mallory v Butler [1991] 1 W.L.R. 458 the Court of Appeal held that:
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> > …
> >
> > (4) The settled practice of the Court is to assess and take into account the merits of the proposed appeal in deciding whether or not to grant an extension of time for appealing (subject to the qualification in the Palata case (above))…

> An extension of time can be granted, in appropriate circumstances, even though the failure to appeal in time was due to a mistake on the part of a legal advisor (Gatti v Shoosmith [1939] 3 ALL E.R. 916, CA)…."

[27]. So, I shall now consider the four relevant factors in relation to the facts of this case.

The length of the delay

[28]. Ms Hippolyte contended that the notice of appeal was 14 days late; it was filed on 9 June, and should have been filed by 27 May which was 28 days after the judgment was handed down on 29 April 2022. Mr Missick says that the delay was a minimum of 29 days because it was not until 24 June that the Applicant's attorney wrote to him to say they had filed an application for an extension of time. He acknowledged that he was aware of the filing on 9 June but said he advised both the Registrar and the Applicant that time had already expired.

[29]. Relying on the Post CPR case of **Denton and Ors v T. H. White Ltd and Anor** [2014] EWCA Civ 906, [2014] 1 WLR 3926 where the application to extend time was treated as an application for relief from sanctions and the seriousness and the significance of the failure to comply with the rules was the primary factor for consideration, both Ms Hippolyte and Mr Missick agreed that the failure to comply with the time requirement was both serious and significant.

[30]. Both counsel appear to have been guided by the Post CPR standard for deciding the seriousness of the delay. In my judgment, while parties must always comply with the timetable in the rules, in a Pre CPR environment within the context of these particular facts, unless the judge had ordered sanctions, or the rules made specific provisions for sanctions in case of failure to comply, the delay is not inordinate having regard to all the circumstances including the length of time the case has been running (about 8 years), that the next session of the Court of Appeal when an appeal could first be heard was a

few months away (late September /early October 2022), and the reason for the delay is excusable.

The reason for the delay

[31]. The delay was caused by the oversight of counsel. As extracted from the White Book an extension of time can be granted, in appropriate circumstances, even though the failure to appeal in time was due to a mistake on the part of a legal advisor (**Gatti v Shoosmith** [1939] 3 ALL E.R. 916, CA.

[32]. The reason for the delay is given in the affidavit of Motheba Linton dated 10 June 2022. She stated that Ms Hippolyte, who had carriage of the case, took ill and in the meantime the attorney who temporarily took over the case after consulting the Court of Appeal (Practice and Procedure) Rules diarized the final date for filing and serving the appeal as 6 weeks from the date of judgment as set out in section 13 of The Bahamas' rules. That date was 9 June. Upon Ms Hippolyte's return from sick leave that diarized date was not changed. The notice was filed on that date and Mr Missick notified.

[33]. According to Mr Missick upon being notified he immediately on that day contacted the AG's office to register his complaint that since the filing was late it could not take place without leave of the Court because the deadline had already passed.

[34]. When one reviews the Court of Appeal (Practice and Procedure) Rules it can be seen how the mistake could be made. The Court of Appeal (Practice and Procedure) Rules, which came into effect 17 March 1975 provides as follows:

> "**Procedure**
>
> **4.**(1) The Court of Appeal Rules of the Bahama Islands shall apply *mutatis mutandis* to appeals from the Supreme Court of the Islands…"
>
> (2) The court of Appeal Rules of the Bahama Islands are set out in the Schedule to these rules."

[35]. In the Schedule it provides:

> "**Time for appealing**
>
> **13**. Every notice of appeal shall be filed, and a copy thereof shall be served under paragraph (4) of rule 11 hereof within the following periods (calculated from the date on which the judgment or order of the court below was signed, entered or otherwise perfected), that is to say:-
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> (a) in the case of an appeal from an interlocutory order, fourteen days;
>
> b) in any other case, six weeks."

[36]. The Bahamas Court of Appeal Act allows the time for appealing to be fixed by the rules. In this jurisdiction the time is fixed by statute. The 28 days in the Ordinance therefore overrides the six weeks in the Bahamas' Rules, which were incorporated by reference.

[37]. When counsel who had carriage of the case returned from sick leave she ought to have detected the mistake. It appears that she likely detected the mistake sometime after the deadline had passed but before the late filing on 9 June. This might explain why both the Notice of Application for Extension of time and the supporting affidavit of Ms Clerveaux explaining the delay were all dated 9 June, the same date of the late filing. The application was filed 6 days later on 15 June.

[38]. I am guided by the opinion of **Quillen** that "…*The discretion should be exercised flexibly with regards to the facts of the particular case and with the main concern to ensure justice to both parties…*". A like opinion was expressed by the English Court of Appeal in **Palata Investments.** That was a case where an error was made by legal counsel in informing the intended appellants that they had six weeks when in fact it had been reduced to four in a practice direction which no one remembered at the time. An extension of time was given.

[39]. Legal advisors, even in the Attorney General's office, are not immune from making mistakes. The mistake must be viewed in light of all the circumstances. In my judgment the provisions of the Court of Appeal (Practice and Procedure) Rules, which incorporated the Bahamas' rules, in the circumstances where there was a break in attorneys having carriage of the case places this in the category of mistakes that can be excused.

The prejudice to the Respondent

[40]. Mr Missick made a number of submissions to support the claim of prejudice to the Respondent. There is built-in prejudice in any case where an action has been decided and the successful party is deprived of finality of the action and kept from the fruits of their victory pending an appeal. However, an appeal is part of the Court's process and parties have a right to appeal provided they come within the rules or are given leave by the court to deviate from them. A party claiming prejudice must provide evidence of the prejudice because, as Ms Hippolyte quite rightly pointed out, the court must have evidence upon which to exercise its discretion. No evidence at all was filed by the Respondent and, apart from the inherent prejudices of an action proceeding to appeal, the Court does not have the evidence on which to exercise its discretion on whether there is particular prejudice to the Respondent in this case.

The chances of success if extension is given

[41]. Mr Missick submitted that the appeal is bound to fail because the trial judge considered a number of cases dealing with CPL agreements on similar facts which have been successful for plaintiffs in those cases, and the judge had used those as binding on him to reach his decisions. Those authorities are cited in his judgment.

[42]. Ms Hippolyte submitted that the test for whether there is a chance of success is *"is the appeal hopeless"*, relying on dicta in the Singaporean Court of Appeal case of **Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd** [2000] 4 SLR 46 at

55. This is the 'strike out' standard. In other words, only if the chances are so bad that a strike out application would succeed should leave be refused on this ground. In **Quillen** Satrohan Singh JA decided to grant an extension because *"...there appears prima facie to be some chance of success in this submission of Mr Mesh"*. In **CM Van Stillevoldt BV v El Carriers Inc.** Griffiths depicted this factor as *"...whether there is an arguable case on appeal"* and McCowan LJ referred to *"...reasonable prospect of success..."*. The **Palata Investments case** states that where the delay in serving the notice of appeal is short and there is an acceptable excuse for it, an extension of time will not be refused on the basis of the merits of the intended appeal, unless the appeal is hopeless.

[43]. I do not think this falls within the **Palata Investments case.** In **Palata** the delay was only 3 days and the intended appellant had informed the intended defendant before the period had ended that he planned to appeal.

[44]. To make a determination of whether there is an arguable appeal the Court must examine the grounds of appeal but bearing in mind that it is not the function of the Court on this type of application to go into a full scale examination of the issues involved (see **Nomura Regionalisation Venture Fund v Ethical Investments** [2000] 4 SLR 46 at 55 above). It seems to me also that the judge should take care not to encroach on the turf of the appellate court in case an extension is granted.

[45]. The parties asked the judge to adjudicate the following six issues:

(i) Whether the Plaintiff wrongfully entered and remained in occupation of parcels 60602/429,430 and 431.

(ii) Whether the offers made to the Plaintiff for CPL on Parcels 429 and 430 had expired.

(iii) Whether the letter from TCIG dated October 29, 2008 relaying Cabinet's decision at its meeting of October 8, created a contract between the parties making the Plaintiff a purchaser in possession and entitling him to have parcels

60602/429 and 607602/430 transferred to him on condition that he pays the freehold purchase prices of $30,000.00 and $70,500.00 or such other sum.

(iv) If the judge found that a contract was created was the contract discharged.

(v) Whether the Plaintiff should be granted an easement over Parcel 60602/431.

(vi) Whether TCIG was entitled to possession of the properties.

[46]. There were seven grounds of appeal from the judge's decision on those issues. I will set out the grounds below seriatim.

[47]. **Ground 1**: *The learned Judge did not give due consideration or sufficient weight to the evidence. Instead he relied solely on the averments in the Respondent's statement of claim which is demonstrated by his reference to the statement of claim throughout his judgment.*

[48]. This is the overarching ground of appeal. On review of the individual grounds of appeal this forms the basis of an arguable appeal. The judgment is repleat with references to passages incorporated by reference in the judgment which would have to be read to determine whether or not the trial judge made a palpable and overriding error in coming to factual or legal conclusions with which an appellate court should interfere.

[49]. This is evident in the grounds of appeal set out below.

[50]. **Ground 2**: *The Learned Judge erred in Law by finding that a contract was created. He did not give any due consideration to the fact that an offer had been made by TCIG but was not accepted by the Respondent until 2013 – which was after the promulgation of the Crown Land ordinance in 2012.*

[51]. The judge at paragraph 20 found that a contract was created. Applying the principles in **M&A** he rejected the argument at paragraph 69 to 71 of the Applicant's written submissions and accepted the arguments at paragraph 39 to 57 of the Respondent's submissions. Neither the Applicant's or the Respondent's submissions were before this Court and it is not possible to apply the Court of Appeal's test to the appealability or

otherwise of the decision until these and the evidence on which they are based are known.

[52]. In paragraph 21 he relied on **CMK BWI Ltd. v Attorney General**[7] to support his conclusion that the Crown Land Ordinance cannot be applied retrospectively to deprive a plaintiff of his contractual right. This depends on whether a contract was formed and remained in effect.

[53]. **Ground 3**: *the Judge erred in fact and law with respect to his findings at paragraph 20 of the Judgment in stating that a contract had been created when Cabinet gave its decision on 8 October 2008. The judge failed to give due regard to the fact that a binding contract for the sale of land in which the order is subject to contract cannot be formed on mere offer an acceptance. He failed to have due regard to the fact that the letter of 8 October could not have given rise to a legally binding contract. He misapplied the judgment in M&A.*

[54]. At paragraph 20 the judge concluded that the 29 October 2008 letter informing the Respondent of Cabinet's decision made at its meeting of 8 October, created a contract and made the Respondent a purchaser in possession, but there is no reference to the contents of the letters, or a copy extracted in the judgment to allow determination of the evidence on which the Judge relied to make the decision. No doubt it will be available in the Record if the appeal proceeds.

[55]. **Ground 4**: *The Learned judge erred in law in holding as he did at paragraph 20 of the judgment that the letter of 29th October 2008 from TCIG relaying Cabinet's decision at its meeting of 8 October created a contract between the parties making the plaintiff a purchaser in possession and entitling him to have Parcels 60602/429 and 60602/430 transferred to him on the condition that he pays the freehold price of $30,800.00 and $73,500.00 or such other sum. The facts and the law do not support that finding.*

[7] [2021] TCACA 2, Civil Appeal No. 16 of 2018

[56]. The judge at paragraph 20 relied on **M&A**. He rejected the submissions of the Applicant at paragraph 69 to 71 that the differences in the facts were materially different from this case and accepted those of the Respondent at paragraph 39 to 57. The contents of these paragraphs were not before me. The contents of the letter of 29 October which is said to constitute the contract are not recited or before me and so the full terms and effect of it cannot be reviewed in order to determine whether or not the judge could be clearly wrong in his conclusion.

[57]. **Ground 5**: *The Learned judge erred in law in finding as he did at paragraph 19 of the Judgment that the offers made in respect of parcels 429 and 430 had not expired. The Crown Land Ordinance intervened in the process negotiations and the offer was extinguished or overtaken by the Crown Land Ordinance prior to the plaintiff's acceptance in 2013;* and **Ground 6**: *The learned Judge erred in law in that he misapplied the judgment of M&A and failed to recognize that its facts were distinguishable and the law could not be applied in the same way.*

[58]. The judge's answer at paragraph 19 to whether the offers had expired was in the negative. His reasons were that the offer was never formally withdrawn by TCIG, and the Respondent's conduct demonstrated that he considered the offers to have remained open to him. He did not specify the conduct upon which he relied. He stated that he relied on the principles in **Attorney General v M&A Services Ltd ("M&A")**[8] and rejected the submissions that the facts in M&A were materially different from those in this case.

[59]. In **M&A** the Court of Appeal specified in the judgment the evidence on which it relied. It stated that the plaintiff had lawfully entered the premises under a signed lease, and his conduct comprised not taking any steps to abandon the contract as he continued to occupy the premises operating the business of the service station, and in addition paid mesne profits demanded by the Appellant (TCIG). In that case the Judge and the Court of Appeal observed that the defendant had fully performed his obligation to build a

[8] [2015] TCACA 3, Civil Action No. 155 of 2013

service station at a cost of $100,000 as part of the consideration of the transfer and therefore the defendant was a purchaser in possession under an agreement for sale. He also had a signed a lease although it had expired.

[60]. It is arguable that without the conduct of the Respondent on which he relied having been disclosed in the judgment it will not be possible for an appellate court to assess the reasonableness or otherwise of that decision.

[61]. **Ground 7**: *(labeled as Ground 8) The Learned Judge erred in law and failed to give due consideration to the fact that the Respondent remained in unlawful occupation of the premises from 2002 and as such would have been required to pay for use and occupation of the property as well as interest in respect of his occupation.*

[62]. In paragraph 23 the judge partially justified the Respondent's occupation of the properties based on the expenditure that he (the Plaintiff therein) out layed on the properties "as mentioned by counsel for the plaintiff at paragraph 73 of his written submissions".

[63]. Paragraph 73 of the submissions was not before me. Nor was there a summary in the judgment of what it contained.

[64]. Although there may be evidence in the Record, on its face it is arguable that the judge may have wrongly treated the submissions at paragraph 73 as evidence to conclude that TCIG was not entitled to possession of the properties.

CONCLUSION

[65]. Having regard to the foregoing, an appeal is necessary to clarify many of the material conclusions of the judge. There are sufficient grounds that are arguable if an extension is granted.

[66]. As to the administration of Justice, Ms Hippolyte submitted that there are obvious implications for the administration of justice and the administration of the Crown Land Ordinance governing the disposition of Crown land in the Turks and Caicos Islands, as well as the necessity for clarity in the law of contracts for the sale of land.

[67]. While the interest of the administration of justice is always the objective of the court, and it is always useful to clear up the general law it seems to me, having regard to the authorities, that this is outside the ambit of factors that need be given specific consideration in this case.

DISPOSITION

[68]. For the reasons which I have discussed, I find that the length of the delay is not excessive in the circumstances, the reason for the delay is reasonable and excusable and not inordinate, there is no evidence of prejudice peculiar to the Respondent, and on the face of it there is an arguable case for an appeal if the extension is granted.

[69]. I am therefore of the view that this is an appropriate case in which to exercise my unfettered discretion to grant the Applicant an extension of time in which to lodge its appeal. I hereby do so, and since the original filing was a nullity I order that the appeal be filed and served by the Applicant within 7 days after the handing down of this judgment.

[70]. The parties are invited to submit written submissions on costs within 14 days.

31 August 2022

/s/ Adderley JA