

IN THE SUPREME COURT OF BELIZE, A.D. 2005

ACTION 585

(DEEP FRIED ENTERPRISE LTD.

CLAIMANT

(

(AND

(THE ATTORNEY GENERAL

(MINISTER OF NATURAL RESOURCES

(GIOVANNI MARIN

RESPONDENTS

BEFORE: Conteh, C.J.

APPEARANCES:

Ms. Velda Flowers for the Claimant

Ms. Nicola Cho for the First and Second Respondents

Mr. Giovanni Marin in Person

J U D G M E N T.

In this application the Claimant has complained that the decision of the Minister made on 15th October, 2004 is unlawful and invalid and also certiorari to quash the said decision of the Minister and all necessary and consequential directions and orders and orders as to costs.

I have had the benefit of listening to both learned attorneys, Ms. Flowers, for the Claimant and Ms. Cho, for the First and Second Respondents and the third Respondent, Mr. Giovanni Marin, who appeared in person and is joined as a party to these proceedings simply for the reason that he is the operator of the pier to which the subject matter of this litigation, Sharks Bar and Restaurant, is situated. The establishment known as Sharks Bar and Restaurant is itself of some vintage, having been in existence since 1977. It has had a change of proprietors from Mr. Allan Foreman, the original proprietor, to Mr. Giovanni Marin and then to Mr. Mcminney, who subsequently sold to the Claimants.

This establishment is popular in the environs of San Pedro and is even claimed to be a landmark in that locale. The Third Respondent, who owns and operates the pier on which the establishment, Sharks Bar and Restaurant is located

or attached to, as contended for by Ms. Cho, applied for a Licence in relation to the said pier. As a condition, for permission to manage the existing pier which is situated between Parcels 922 and 4039 in San Pedro Town, San Pedro Registration Section, the Ministry of Natural Resources, by letter dated 16th October, 2004 to Mr. Marin, granted permission but subject to certain conditions, in particular Condition 2 of the said permission is what the claimant in the present proceedings before me has taken issue with.

This Condition states as follows:

"2. The structure presently being used as a bar shall be removed by 24th November, 2004 and shall be relocated to the other side of the existing pier with dimensions reduced to 20 feet by 30 feet as on the attached sketch."

By the Private Works Construction Act, Chapter 337 of the Revised Edition 2000 of the Laws of Belize, the Minister is given power to grant licences for construction of works subject to conditions as he thinks fit and proper in each case. However, the Condition 2 in the present case before me is not a stand alone. It is informed from the evidence in the several affidavits in this matter by a long standing dispute between the proprietors, originally Mr. Allan Forman and the owners of one of the lots adjacent to the pier. This long standing litigation did not give satisfaction to the owner of this lot who found the operation of Shark's Bar and Restaurant a nuisance. He failed to get satisfaction in the courts. As a result of complaints made to the Ministry, the Ministry has now sought to impose this Condition 2.

I find as a matter of law that much as the Minister has the power to impose conditions, in the circumstances of this case, in imposing this condition, it acted unfairly to the prejudice of the Claimant who had no opportunity to make representations as regards the claim of nuisance or even to make objections or

representation on the request to relocate the establishment to the other side of the pier.

I have in evidence the Claimant saying that to relocate the establishment from its present location would work financial hardship and inconvenience on it.

It was not afforded the opportunity to make representation to the Ministry. I therefore find that the decision cannot stand. This, however, is without prejudice to the powers of the Minister under the Private Works Construction Act.

I therefore quash the present decision and direct the Ministry to reconsider it having had the benefit of representation from the Claimant.

It must be borne in mind that this establishment, Sharks's Bar and Restaurant has been at its present location for quite a considerable number of time and its present proprietors bought it as an investment opportunity. These, I think, are reasonable considerations to be taken into account by the Ministry in reconsidering this matter.

I must observe that I am not persuaded by Ms. Cho that the National Lands Act is the applicable legislation in this case as the Claimants are not claiming a right to occupy national lands. Their claim is narrow and simple, to operate an erection on a pier known as the Shark's Bar and Restaurant, a situation, which in my view, falls within the ambit of Section 2 of Chapter 337 of the Private Work's Construction Act.

In sum, therefore, the decision of the Ministry is quashed and remitted back for reconsideration in the light of the observations and guidance I have provided in this judgment.

Costs to be taxed if not agreed.

DATED this 5th day of December, 2005

ABDULAI CONTEH
Chief Justice