



**Hearing Date:** 5 July 2022

**Venue:** Court No. 5, Graceway Plaza, Providenciales

**Date Delivered:** Friday, 8 July 2022

### **Brief Factual Background**

1. These proceedings concern the appointment of water undertakers under the Water and Sewerage Ordinance (“the Ordinance”<sup>1</sup>). The Plaintiff and the 1<sup>st</sup> Defendant have both been appointed water undertakers for the Leeward Area, by the Minister for Home Affairs, Public Utilities and Transportation. The Plaintiff seeks *inter alia* a declaration that except where s 34 of the Ordinance applies there can be only one water undertaker with respect to a particular geographical area.

### **The Summonses**

2. There are two summonses before the Court:
  - a. the Plaintiff’s summons under Order 24, rule 11 of the Civil Rules 2000, dated 4 May 2022 for inspection of documents (“the Inspection Summons”); and
  - b. the 1<sup>st</sup> Defendant’s summons for directions dated 14 June 2022, seeking the determination of preliminary issues (“the Directions Summons”).

### **The Inspection Summons.**

3. Order 24, rule 11 provides that where a party objects to the production of any document for inspection, the Court may on an application of the party entitled to inspection, make an order for inspection. The Inspection Summons concerns:
  - a. An Instrument of Appointment dated 6 December 1996;
  - b. A Variation of Appointment dated 3 April 2006; and
  - c. A Second Variation of Appointment dated 15 June 2012.  
(collectively “the Documents”).

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<sup>1</sup> CAP 8:03.

4. The Documents were disclosed and copies provided for inspection, but they contained redactions. The 1<sup>st</sup> Defendant asserted that the redactions related to commercially sensitive information and that in any event, the redacted sections are not relevant to the issues in the action. Dissatisfied with this response the Plaintiff applied by the Inspection Summons for an order for inspection of the full, unredacted Documents.
5. On 30 June 2022, two working days before the hearing of the Inspection Summons, the 1<sup>st</sup> Defendant disclosed unredacted copies of the Documents. At the hearing, the parties agreed that consequently, the Inspection Summons was rendered academic, save as to costs.
6. The Plaintiff argued that it should be awarded the costs incurred by the Inspection Summons, both because of the lateness of the disclosure and because the reasons advanced by the 1<sup>st</sup> Defendant for withholding full inspection were without merit. The Plaintiff denied that the Documents contained commercially sensitive information and contended that the Documents were relevant public documents, which ought to be published on a register, under s 100 of the Ordinance.
7. The 1<sup>st</sup> Defendant in response, maintained that the reasons for its initial refusal to provide unredacted copies of the Documents were valid, however it decided to disclose them in order to move the matter along. The 2<sup>nd</sup> Defendant supported the 1<sup>st</sup> Defendant's position, agreeing in particular, that the documents were commercially sensitive.
8. At this stage of the proceedings, it is not necessary (and it would arguably be inappropriate) for me to make a ruling as to the relevance or commercial sensitivity of the previously redacted parts of the Documents. However, the fact is that the Plaintiff requested full unredacted copies of the Documents and filed the Inspection Summons months ago. The 1<sup>st</sup> Defendant decided to provide them but only a few days before the hearing. In those circumstances, in my view the appropriate costs

order would be that the 1<sup>st</sup> Defendant should pay the costs of the Inspection Summons.

### **Disposal of Inspection Summons**

9. In the circumstances, I order that 1<sup>st</sup> Defendant pay the costs of the Inspection Summons.

### **The Directions Summons**

10. By the Directions Summons, the 1<sup>st</sup> Defendant applied for an order that the court conduct a preliminary hearing and give consequential directions to determine whether the Ordinance allows the appointment of more than one undertaker for a specific geographical area. The 1<sup>st</sup> Defendant contends that the first prayer for relief in the substantive claim (the declaration), is a discrete legal issue which can be decided on submissions.
11. The 1<sup>st</sup> Defendant further argues that a preliminary hearing ought to be conducted as, in answer to a Summons filed by the Plaintiff on 27 January 2022, it gave an undertaking to not install pipelines, service connections or take any other preparatory steps to supply water to the Leeward Area. If the preliminary issue is determined in the affirmative, the 1<sup>st</sup> Defendant will be able to act as an undertaker while the substantive claim is determined.
12. In response, the Plaintiff accepts that the preliminary issue turns on a question of law, which can be determined in advance of the trial, but says it should be pursuant to an order under Order 14A. Counsel for the Plaintiff also informed the Court that it intends to amend the Writ of Summons, however such amendments would not affect the declaration (save for it being a declaration under the amended Summons).
13. Order 14A provides:
  - “1. (1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any

cause or matter at any stage of the proceedings where it appears to the Court that-

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire case or matter or any claim or issue therein.

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.”

14. I am satisfied that a determination as to whether the Ordinance allows the appointment of more than one undertaker for a specific geographical area, turns solely on the interpretation of the Ordinance, is suitable for determination without a full trial, and will finally determine the Plaintiff’s claim for the declaration<sup>2</sup>.

### **Disposal**

15. In the circumstances, the Court will; 1) dismiss the Directions Summons, 2) of its own motion order a hearing of the preliminary issue under Order 14A, and 3) make no order as to costs on the Directions Summons.

**The Hon. Mr. Justice B. St. Michael Hylton QC (Ag)**

**Judge of the Supreme Court**

**8 July 2022**



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<sup>2</sup> As contained in its current Writ of Summons (un-amended).