

IN THE SUPREME COURT OF BELIZE 2007 A.D.

CLAIM NO. 170 OF 2007

BETWEEN:           PENINSULA CITIZENS FOR                                   APPLICANT  
                          SUSTAINABLE DEVELOPMENT  
                          LTD

AND

                          THE DEPARTMENT OF THE                                   RESPONDENT  
                          ENVIRONMENT

AND

                          ARA MACAO DEVELOPMENT           INTERESTED PARTY  
                          LTD

Ms. A. Moore for the applicant.

Ms. N. Cho for the respondent.

Dr. E. Kaseke for the interested party.

AWICH     J

7.5.2007

DECISION

1. The applicant, Peinsula Citizens for Sustainable Development Limited (PCSD), is a corporation which does not aim at profit making. Its objects are: “to promote the sustainable development of Belize, particularly in the Placencia Peinsula, to protect the cultures, ecologies and environment of Belize, particularly in the Placencia Peinsula,” and to promote awareness of the same. The respondent is the Department of the Environment in the Ministry of Natural Resources. The interested party is Ara Macao Development Ltd, AMD, an investor company which has obtained an environmental clearance, for its project in the Placencia Peninsula under the *s: 20 of Environmental Protection Act, Cap 328, Laws of Belize*.
  
2. PCSD has applied to this Court for permission to bring judicial review proceedings in which it will ask the Court to review and quash the decision of the Department conveyed to AMD in a letter dated 3.1.2007, granting the environmental clearance for the project. With the application for permission PCSD also asked for an interim order restraining use of the clearance by AMD and any work on the project. The project is known as Ara Macao Resort and Marina. It is to be situated in a very large area covering 582 acres of land north of Placencia Peninsula and south of Riversdale Village. It will have one mile of the Caribbean Sea coastline and 200 feet of

Placencia lagoon frontage. It is a very large project to build: a 260 room hotel, casino and night club, 456 condominium units, 296 villas, a large marina, a 410,000 square feet commercial center and a 18 hole golf course.

3. The ground for the intended judicial review and on which the application is based is that the clearance was granted unlawfully, because the Department did not comply with *s: 20 of the Environmental Protection Act* and *regulations: 18 and 26 (1) (a) and (c) of the Environmental Impact Assessment Regulations, Statutory Instrument No. 107 of 1995*. Section 20 and the regulations require the preparation of an environmental impact assessment for all “*projects that will significantly affect the environment*”. The assessment must be prepared “*by a suitably qualified person*, and it is the responsibility of the person undertaking the project. AMD caused an environmental impact assessment to be prepared. The Department studied it and approved it, and gave an environmental clearance for the project, subject to a monitoring plan it called, “Environmental Compliance Plan”. PCSD disagreed and complained that the process of considering the environmental impact assessment was unlawful, and so the environmental clearance was given unlawfully.

4. The specific noncompliance with the law given by PCSD were:
- 1) failing to consider the cumulative impact of the project with other projects in the area, in particular, the impact on sufficiency of portable water source and handling of sewage;
  - 2) failing to consider public comments;
  - 3) acting on insufficient information provided in the environmental impact assessment compiled by AMD (required by law), especially about portable water source;
  - 4) acting unreasonably on insufficient information.
  - 5) acting irrationally by failing to take account of relevant information, namely the effect of a 18 hole golf course on the surrounding coastal area by the release of nitrate sediment into the sea; and
  - 6) failing to consider public access to the sea, the project will restrict public access to the sea in the area.

5. Having read the affidavits and some of the papers filed by the parties and having heard the submissions by the three learned counsel in Court, it was my view that the complaints raised by PCSD were baseless. However, in deference to learned counsel Ms. Moore, an experienced, well intentioned

and articulate attorney, I decided to peruse all the rather large number of documents assembled in the case, to ensure that I do not miss important material information.

6. My conclusion from the perusal are these. Factually it is incorrect to say that in the environmental impact assessment, submitted by AMD, testing for sufficiency of portable water source was done only during and for rainy season. It is also incorrect that the sewage factor was not dealt with in depth, or that the impact on the environment of the golf course was not assessed, or that the information supplied by the public was not taken into account. Moreover, the scientific information supplied by a Dr. Williams as well as matters raised by one Mary Toy were considered. The two were individuals who desired to be heard more than the general public was generally. One other inaccuracy is that the cumulative impact of the AMD project with other projects in the surrounding area was not included in the environmental impact assessment and not considered. All the scientific points complained about were addressed in the exceedingly detailed environmental impact assessment compiled at the request and expense of AMD as a requirement of s: 20 of the Act, for the Department. In fact the first report was considered lacking in some aspects, and the Department

asked AMD to attend to a number of issues including conducting further public consultation. As the result AMD called another public meeting.

7. Under the Act, more specifically under the Regulations made thereunder, at regulation 25, the Department acts by its agency known as the National Environmental Appraisal Committee (NEAC), when it considers the technical matters that an environmental impact assessment must deal with and report on. The members of NEAC are:

- (a) the Chief Environmental Officer or his nominee, as chairman,
- (b) the Commissioner of Lands or his nominee;
- (c) the Housing and Planning Officer or his nominee;
- (d) the Chief Forest Officer or his nominee;
- (e) the Fisheries Administrator or his nominee;
- (f) the Chief Hydrologist or his nominee;
- (g) the Archaeological Commissioner or his nominee;
- (h) the Director of geology and Petroleum or his nominee;
- (i) the Chief Agricultural Officer or his nominee;
- (j) two non-governmental representatives appointed by the Minister on the recommendation of the Department.

8. There has been no complaint that the NEAC was not properly constituted. It is true that during their meetings some members made comments which were not in favour of some of the reports in the environmental impact assessment, but in the end the membership approved the assessment. Instead of regarding the unfavourable comments as reasons for NEAC not to approve the assessment, I regard the comments made as evidence that the attention of members was drawn to items of information that were unfavourable to the granting of clearance and each member addressed his mind to the comments and other items of information and in the end they collectively took a well considered decision approving the assessment, well aware of unfavourable comments. They met three times in their deliberation.
  
9. There is one complaint which I think is of a social and political nature, namely, the complaint that the general public in the area will be denied free access to the sea through the one mile and 200 feet seafront in the area of the project. Many people in the area have written or signed their names in support of the project. Their reason is that the project will bring employment for them. Obviously they were aware that the project will take

up some seafront and they will not be able to wander there completely freely, yet they favoured the project. There were some who opposed the project; the number is smaller. The Court cannot conclude merely from the numbers of signatures for an against the project, that the project is lawful or not. It is an economic development as well as a political question which the local population is entitled to discuss with their leaders and the Government, and even get the Government to change its mind. It must, however, be remembered that in the end the Government is entitled to take a decision one way or the other. The Government has taken the decision to authorise the project provided the environmental impact assessment is made, studied and approved by the experts on NEAC, and an environmental clearance is given for the project by the Department as required by law. That has been done lawfully. The economic and political aspect must be kept at that arena; there is no part for the Court at that arena.

10. I am inclined to comment that in regard to this project, the Ara Macao Resort and Marina, the Department of the Environment has followed the law to the letter in the process leading to the granting of the environmental clearance. It is not surprising because in two previous cases; *Belize Alliance of Conservation etc v The Department of Environment and*



*Belize Electrical Company Ltd, Privy Council Appeal No. 47 of 2003*, and *Sarstoon Institute for Indigenous Management Ltd v The Department of the Environment, Claim No.212 of 2006*, court found fault with regard to the requirements under the Environmental Protection Act. This time the Department ensured that it got it right. It ensured that detailed scientific studies were carried out during the compilation of the environmental impact assessment. Some of the conclusions made by scientists engaged by AMD were criticised by scientists engaged by the applicant. That does not necessarily invalidate the assessment. NEAC studied both sets of views and made scientific conclusions from which it granted clearance. The conclusions were not unreasonable simply because the scientists on NEAC rejected the views of the scientists engaged by the applicant or even accepted them and made recommendations for monitoring measures. Moreover, NEAC is entitled to give clearance based on weighing up economic and political considerations against environmental ones provided its decision is not unreasonable on the face. There are no grounds to fault the decision of NEAC to give the environmental clearance.

11. The application for permission to bring judicial review proceedings to review the decision by the Department of the Environment dated 3.1.2007,

to give Environmental Clearance for the project of Ara Macao Development Ltd, namely, the Ara Macao Resort and Marina, in the area north of Placencia Peninsula and south of Riversdale Village, is refused and dismissed. The decision is lawful. It follows that no interim injunction order is made in regard to the decision, and in regard to Ara Macao Development Limited proceeding with the project.

12. The applicant, Peninsula Citizens for Sustainable Development Ltd, will pay the costs of this application to the Department of the Environment and to Ara Macao Development Ltd. The costs to be agreed or taxed.

13. Delivered this Monday 7th of May 2007  
At the Supreme Court  
Belize City

Sam Lungole Awich  
Judge  
Supreme Court of Belize