

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY DIVISION  
2006/PUB/jrv/FP/0006**

**BETWEEN**

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**THE QUEEN**

**AND**

- (1) THE ASSISTANT/DEPUTY CONTROLLER OF ROAD TRAFFIC  
(2) THE INSPECTOR OF ROAD TRAFFIC**

**EX PARTE**

**G. B. JANIKI INVESTMENTS COMPANY LIMITED**

*Applicant*

**BEFORE:** The Honourable Mrs Justice Estelle Gray-Evans  
**APPEARANCES:** A. Kenra Parris-Whittaker and Jacy Whittaker for the applicant  
Melissa Wright along with Ingrid Brooks for the respondent  
2011: 22 November

**JUDGMENT**

Gray Evans, J.

1. By an originating Notice of Motion filed 28 August 2007 the applicant seeks the following relief against the respondents:
  - a. An Order of Certiorari to quash the said decision of the Inspector of Road Traffic not to inspect the Applicant's vehicles and the decision of the Assistant/Deputy Controller of Road Traffic not to license and register the applicant's vehicles; and further or alternatively,
  - b. A Declaration that the said decisions were *ultra vires* or otherwise irrational or unreasonable.
  - c. An Order of Mandamus to require the Inspector of Road Traffic to inspect and the Assistant/Deputy Controller to register the applicant's vehicles and to issue identification plates for the said vehicles.
  - d. Cost and damages.
2. The application was supported by the affidavits of James Kemp filed on 19 September 2006 and 13 July 2011. The respondents relied on the affidavits of Stephanie Rahming filed on 8 July 2008 and 3 February 2009, to oppose the plaintiff's application.
3. The facts, as gleaned from the affidavits, are not disputed and are set out hereunder:
  - a. The applicant is a company incorporated under the laws of the Commonwealth of The Bahamas and a licensee of The Grand Bahama Port Authority Company Limited ("the Port Authority").
  - b. By a license agreement made on 1 December 2005 between G.B. Janiki Investments Co. Ltd and the Port Authority, the Port Authority gave G.B. Janiki investments Co. Ltd a license "to carry on the business of a taxi company."
  - c. The license was amended by agreement dated 1 February 2006 between the Port Authority and G.B. Janiki Investments Co. Ltd to substitute the name of "G B Janiki Investment Co. Ltd. trading as "City Cab" ("the applicant") for the name of the Grantee, G.B. Janiki Investments Co. Ltd, in the license agreement.
  - d. On 1 February 2006 the applicant was granted a certificate of registration pursuant to the Registration of Business Names Act, 1989.
  - e. The applicant applied for and was issued a customs bond and was also granted open warehouse status from Bahamas Customs in or about April 2006.

- f. The applicant was permitted by Bahamas Customs to import several vehicles under its bond and obtained a certification from Bahamas Customs to the effect that the said vehicles were "bonded."
  - g. During the month of May 2006, the month designated for the inspection and registration of public service vehicles, Mr. James Kemp, the president of the applicant attempted to have one of the aforesaid vehicles, a 1999 Ford Taurus, inspected and licensed.
  - h. The applicant presented the vehicle to the Inspector of Road Traffic ("Inspector") for inspection and provided him with the particulars required in the application for registration of the vehicle.
  - i. The applicant did not have a license from the Government to operate a taxicab business within the Port Area.
  - j. The Inspector refused to inspect the applicant's vehicle and referred the applicant to the Assistant Controller of Road Traffic, Mrs. Stephanie Rahming ("the Controller").
  - k. The Controller informed the applicant's principal, Mr. James Kemp, that she would not register his vehicle or issue a license for it or any of the applicant's other vehicles because firstly, he did not have a Government-issued taxicab license or a letter from the Government authorizing the issuance of taxicab plates; and secondly, because the Government had a moratorium on issuing taxi plates.
  - l. By letter dated 28 August 2006, counsel for the applicant wrote to the Controller requesting her reasons for refusing to register and license the said vehicle.
  - m. The applicant commenced this action on 19 September 2006.
4. The applicant contends that the respondents, in refusing to inspect, register and license its vehicle, appear to have concluded wrongly that the Government's moratorium on issuing taxi plates prevented them from doing so and they failed to consider that the moratorium did not include a moratorium within the Port Area.
5. The applicant contends further that in refusing to inspect, register and license the said vehicle, the respondents acted *ultra vires* or otherwise acted illegally or irrationally in that they took into consideration irrelevant matters resulting in the applicant's vehicle not being inspected, registered or licensed.
6. In support of its position, counsel for the applicant cited several authorities, including: *Shangrila Ltd v The Grand Bahama Port Authority Limited* [1984] BHS J. No. 29; 1984 No. 154; *Commonwealth Brewery Limited v The Attorney General of the Bahamas et al* No. 14 of 1997; *Minister of National Insurance v Smith* 40 WIR 1; *Sandra Hepburn and*

Angelique Prudent v Comptroller of H.M. Customs and Attorney General of the Commonwealth of The Bahamas, No. 249 of 1995; Bahamian Outdoor Adventurer Tours Ltd v R., No. FP29 of 2000; Lady Henrietta St George and others v Sir Jack Hayward and others, No. FP223A and B of 2006; The Grand Bahama Telephone and Communication Workers Union v Grand Bahama Telephone Company Limited No. 728 of 1986, which together provide an extensive review of the Hawksbill Creek Agreement (as amended) and the relationship between the Port Authority, its licensees and the Government, including its licensing and regulatory bodies.

7. The respondents, on the other hand, contend that the applicant is required by the Road Traffic Act, chapter 220, Statute Laws of The Bahamas, to obtain a license from the Government for a vehicle carrying passengers for hire or reward, including a taxicab. The respondents contend further that if the Government has in place a moratorium on the issuance of such licenses, such moratorium would affect the entire Bahamas, including the Port Area.
8. The issue that arises for determination is: Were the respondents' decisions not to inspect, register and/or license the applicant's vehicle illegal, irrational, procedurally improper and/or *ultra vires*?
9. In order to determine that issue it is necessary, in my view, to consider whether the applicant required a Government-issued license to carry on the business of a taxi-cab company within the Port Area before it could license its vehicles to operate the said business.
10. In 1955, the Governor in Council, then the executive authority of the Bahama Islands, was authorized by Parliament through the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act, chapter 261, to enter into an Agreement, which was set out as a schedule to the Act ("the Agreement"), for the dredging of a deep water harbor and the establishment of an industrial area at and in the vicinity of Hawksbill Creek, Grand Bahama. The Agreement, made between the Government of the Bahama Islands and the Port Authority, was duly signed on 4 August 1955 and became a contract with binding effect between the Government of the Bahamas and the Port Authority, and with consequential effects for licensees of the Port Authority.
11. The Agreement was amended on several occasions by several amending Acts: in 1960, 1965 and 1966 (See chapters 262 to 265 of the Statute Laws of The Bahamas) and most recently in 1993 (chapter 30). The 1993 amendment extended certain tax exemptions in the Agreement. The Hawksbill Creek Grand Bahama (Deep Water

Harbour and Industrial Area (Extension of Tax Exemption Period Act) 1993 (#21) ("the 1993 Tax Exemption Extension Act) was enacted pursuant to the 1993 Act. The original Act, the Amending Acts and Legislation are hereinafter together referred to as the Hawksbill Creek Acts ("HCA").

12. By Clause 3(7) of the Agreement the parties mutually agreed that:

"The Port Authority will not assign their rights under this Agreement without the consent in writing of the Government Provided Always that nothing in this sub-clause contained shall be deemed to prevent or restrict in any way the Port Authority licensing any person, firm or company to carry on any lawful business, undertaking or enterprise within the Port Area on such terms and conditions as the Port Authority shall in (its) absolute discretion deem fit and proper, subject only to the provisions hereinbefore contained."

13. By clause 2(23) of the Agreement, it was provided:

(23) That subject to the provision of sub-clause (10) hereof only the Port Authority and any licensee shall have the right:

(a) To carry on and engage in...any business or undertaking of trucking or transporting passengers and freight, stevedoring, and handling of freight, within the Port Area during the continuance of this Agreement without having to obtain any permit or licence therefore [sic] or in respect thereof from the Government or any department thereof or any licensing Authority thereof, any present laws and regulations of the Colony and the enactment of future laws or regulations within the Colony to the contrary notwithstanding; and

(b) To carry on and engage in any other lawful business or undertaking (other than those referred to in paragraph (a) of this sub-clause of this clause) within the Port Area during the continuance of this Agreement without having to obtain any permit therefore [sic] or in respect thereof from the Government or any department thereof, provided always that if any law or regulation for the time being in force in the Colony shall require that the person intending to carry on any such other business or undertaking shall first obtain a licence therefor, then and in that case such licence shall be first applied for and obtained in the normal manner and as if such other business or undertaking was not to be carried on within the Port Area, and Provided further that if the person applying for such licence shall be refused the grant thereof within the Port Area then such person shall not carry on or engage in such business in respect of which such licence shall have been refused within the Port Area.

14. It is clear from the above provisions that in order for the applicant to carry on business within the Port Area it is obliged to obtain a license therefor from the Port Authority,

whether such business undertaking fell under sub-clause 2(23)(a) or under sub-clause 2(23)(b) of the Agreement.

15. Further, it is common ground that in relation to businesses falling under sub-clause 2(23)(a), the Port Authority is the sole licensing authority and there is no need for the licensee to also obtain a license from the Government to operate such business. (see *Shangrila (1982) Limited v The Grand Bahama Port Authority, Limited et al supra*.)
16. In relation to any other lawful business which does not fall under sub-clause 2(23)(a), the Port Authority is also the sole licensing authority except in the case of businesses which also require a license from the Government, in which case the Government's license has to be obtained before the Port Authority can issue a license to carry on such business within the Port Area.
17. The applicant says that the business of a taxi company is a business of 'transporting persons' so clearly it falls within sub-clause 2(23)(a), whereas, the respondents contend that the business of a taxi company falls under sub-clause 2(23)(b).
18. While conceding that provision is made under sub-clause 2(23)(a) for the business of 'transporting passengers', counsel for the respondents argues that those words are used as part of a list of other words associated with ships or vessels; that the wide words "transporting passengers" are used conjunctively with the limited word "freight", which also seems to relate to passengers on a boat or vessel as opposed to transporting passengers in a taxi cab. Therefore, counsel submits, the words "transporting passengers" could be interpreted with the same limited character.
19. In her submission, "transporting passengers" does not mean transporting passengers in a taxi cab but rather refers to the transporting of passengers on a boat or vessel, as in the case of freight.
20. For that argument counsel for the respondents relies on the *ejusdem generis* principle described in Bennion on Statutory Interpretation (5<sup>th</sup> edition) at page 1231 as follows:

"The Latin words *ejusdem generis* (of the same kind or nature) have been attached to a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. The principle may apply whatever the form of the association, but the most usual form is a list or string of genus-describing terms followed by wider residuary or sweeping-up words.
21. Sub-clause 2(23)(a) provides that the Port Authority and its licensees have the right during the continuance of the Agreement "to *carry on and engage in... any business or*

*undertaking of trucking or transporting passengers and freight, stevedoring, and handling of freight, within the Port Area...*" [emphasis added].

22. "Freight" is defined by the Concise Oxford Dictionary (10<sup>th</sup> edition) as: "transport of goods in bulk, especially by truck, train or ship"; and "transport" is defined in the same place as to "take or carry from one place to another by means of a vehicle, aircraft or ship".
23. "The Port Area" is defined in Clause 1(3) of the Agreement as:
  - a. The area comprising the said Fifty thousand acres of Crown land to be leased by the Crown to the Port Authority;
  - b. The said Eighty acres of land to be purchased by the Port Authority from private owners; and
  - c. Such part of the said Fourteen hundred and Twenty acres of land as the Port Authority may purchase from private owners within three years from the date of this Agreement;

all of which including the Port Project are hereinafter collectively referred to as "the Port Area" which terms shall include such other lands situate on the said Island of Grand Bahama and lying Eastwardly of a line drawn across the said Island North and South at a point Three miles West of the West bank of Hawksbill Creek where it joins the Sea on the South side of the said Island as may be purchased by the Port Authority during the continuance of this Agreement and are declared to be part of the Port Area by Order-in-Council published in the Official Gazette pursuant to the provisions of sub-clause (19) of clause 2 hereof."

24. I suggested to counsel for the respondents during the course of her arguments that it seemed to me that the respondents were attempting to treat the "Port Area" in section 2(23)(a) as if it were simply a seaport and she agreed with me, although to her credit, she admitted it was a novel idea.
25. To my mind, if the parties to the Agreement wished to place that restrictive an interpretation on "transporting passengers" they could easily have included the words "to and from the Port Area" rather than "within the Port Area".
26. It seems, then, that the applicant is correct. The business of a taxi company, which is, in my opinion, the business of transporting passengers, falls within the list of businesses provided for in sub-clause 2(23)(a) and, therefore, the applicant, in my judgment, did not need a license from the Government to operate such business within the Port Area. See the Shangri-la and the Commonwealth Brewery cases.
27. However, that is not the end of the matter.

28. By the fourth schedule to the license agreement, the applicant, as licensee of the Port Authority, was required to “comply with all rules and regulations of the Government and to obtain and maintain all permits or licenses necessary for the operation of the business or enterprise referred to in the first schedule”.
29. In order to operate the business of a taxi company, the applicant needed to have its motor vehicles inspected, registered and licensed. The Port Authority does not inspect, register or license vehicles. Those functions are carried out by the Road Traffic Department pursuant to the provisions of the Road Traffic Act and its Regulations, chapter 220, Statute Laws and Subsidiary Legislation of The Bahamas which govern the inspection, registration and licensing of vehicles to be used in The Bahamas, including the “Port Area”, whether or not they are to be used as taxicabs.
30. The provisions regarding inspection of motor vehicles, other than public service vehicles, are set out in Section 3 of the Road Traffic (Vehicle Inspection) Regulations, while sections 4 and 5 of the Motor Vehicle and Speed Limit Regulations deal with the registration and licensing of such vehicles and are set out hereunder.
31. Section 3 of the Road Traffic (Vehicle Inspection) Regulations:
  3. (1) The owner of a motor vehicle applying for the registration of such vehicle shall present the vehicle to the Inspector for inspection and provide the Inspector with the particulars required in the application for registration of a motor vehicle.
  - (2) The Inspector shall then inspect or cause to be inspected such vehicle, and, on being satisfied that all the conditions laid down in the Motor Vehicle and Speed Limit Regulations as to the fitness of a motor vehicle have been complied with, shall, on the payment of a fee of ten dollars, issue to the owner a certificate of fitness endorsed on the application for registration and a certificate of inspection to be attached to the windshield of the vehicle as the Inspector may direct.
32. Sections 4 and 5 of the Motor Vehicle and Speed Limit Regulations:
  4. The owner of a motor vehicle shall apply to the Controller for registration of such motor vehicle and shall furnish him with the particulars specified in Form 1 in the Schedule.
  5. The Controller, on receipt of such application, and the fee set out in the Schedule of the Act, shall forthwith assign a separate number to the motor vehicle and register it by making the required entries in the register and shall issue a license to the owner.



33. "Public service vehicle" is defined as a motor vehicle designed or adapted for the carriage of passengers which is, inter alia: (c) a motor vehicle having a seating capacity for not more than twelve passengers which is used as, inter alia, a taxi-cab.
34. Section 64(1) of the Road Traffic Act provides that no motor vehicle shall be driven or used for the carriage of passengers for hire or reward unless it is a motor vehicle which is licensed under this Act as, inter alia, a taxi-cab, or is driven by or by a person employed by the holder of a franchise.
35. The provisions regarding the inspection, registration and licensing of public service vehicles are set out in Section 33 of the Motor Vehicle and Speed Limit Regulations and are as follows:

The owner of a motor vehicle to be licensed as a public service vehicle shall produce such vehicle, together with its registration card to the Controller who shall inspect it, its tools, spare tyres and equipment and upon being satisfied that the motor vehicle is fit and proper to be licensed as a public service vehicle, and on receipt of the fee set out in the Schedule of the Act, shall issue a registration and licence card and shall register the vehicle in the appropriate register and issue to the owner two appropriate registration plates.

36. Clearly from those provisions, once an owner provides the particulars required in the application for registration, satisfies the Inspector that the conditions in the Motor Vehicle and Speed Limited Regulations as to fitness of a motor vehicle, to be used as a taxicab or otherwise, have been complied with, the Inspector is mandated to inspect or cause to be inspected such vehicle and, upon the payment of the requisite fee, to issue to the owner a certificate of fitness and a certificate of inspection.
37. Furthermore, once the owner has provided the requisite particulars and pays the requisite fee, the Controller is mandated forthwith to assign a separate number to the motor vehicle, register it and provide the owner with two identification plates for the said vehicle.
38. Section 6 of the Motor Vehicle and Speed Limit Regulations states that identification plates may be of different types according to the different classes of motor vehicles and those different types include, inter alia: (i) taxi-cab, which must bear a registered number preceded by the word "Taxicab"; and (ii) "motor vehicles imported under bond which bear a plate of a different and distinguishable colour from the plates of other motor vehicles belonging to the same class or category."

39. A "bonded" vehicle is a creature of the Port Area and it is clear that Section 6 of the Motor Vehicle and Speed Limit Regulations permits vehicles used in the Port Area to use "bonded plates" notwithstanding that in another part of the Bahamas, outside of the Port Area, such vehicle would have been provided with another type of license plate, including a "taxicab".
40. The evidence is that the applicant, having obtained the necessary license from the Port Authority to operate the business of a taxi company, applied for and obtained a customs bond from, and was granted open warehouse status by, H.M. Customs, thus enabling it to import vehicles under its bond. Thereafter the applicant imported several vehicles under its bond to be used in its business.
41. However, according to Mr Kemp, when he, on behalf of the applicant, attempted to have one of its "bonded" vehicles inspected "as a taxicab", although the applicant was not requesting "taxicab plates", he was told by the Inspector that due to an alleged "taxi moratorium" he was unable to inspect the vehicle and instead of inspecting the vehicle, the Inspector referred the applicant to the Controller who also refused to register the applicant's vehicle and provide him with a license plate for his vehicle.
42. It is not contended that the applicant's application for inspection and registration was not in order; nor is it contended that the applicant's vehicle was unfit in any way to be operated as a taxicab. Seemingly, the only impediment to the Inspector inspecting, and the Controller registering, the applicant's vehicle and providing the applicant with license plates therefor, was the applicant's lack of a Government-issued License to operate a taxicab and the Government's alleged moratorium on the issuance of taxicab license plates.
43. As observed by Adams J in the Shangrila case, "under the agreement, the Port Authority has the right to license the [applicant], subject to the provisions contained therein, on such terms and conditions as it shall in its absolute discretion deem fit." Unlike in the Shangrila case where the Port Authority sought to make it a condition precedent to the grant of the license that the plaintiff in that case should also receive the approval of the Government, in this case the Port Authority has already granted the license. It seems to me that in doing so, the Port Authority must also have been of the view that the business of a taxi company falls under sub-clause 2(23)(a), since a business under sub-clause 2(23)(b) would have required a license from the Government before the Port Authority could issue one.

44. I, therefore, agree with the view expressed by Adams, J at page 19 of the Shangrila case where he said:

"In view of the fact that the plaintiff's proposed business falls within sub-clause 23(a) of clause 2 of the Principal Agreement, it is not required to obtain any permit or license to carry on and engage in its business from the Government or any Government department or any licensing authority. There is no law that permits the Government or any of its Ministries to intervene in the licensing procedure of the Port Authority with respect to the plaintiff's type of business either by way of approval or veto..." And as expressed by Ganpatsingh J (as he then was) in *Hepburn v Controller of H.M. Customs*: "It seems to me that once the condition for the concession was satisfied, there is no jurisdiction or authority in the Comptroller of Customs [in this case, the Inspector and/or the Controller] to override the discretion exercised by the way of prerogative power."

45. In relation to that prerogative power, Adderley J in the case of *Lady Henrietta St George and others v Sir Jack Hayward and others* opined:

"It appears that in the statutes which counsel may have had in mind where the Parliament drew special attention to the Act it was to avoid an overlap of prerogative authority. There would have been an overlap of the responsibility of the Minister of Works and the Grand Bahama Port Authority or the Minister of Finance or other Minister constitutionally responsible for the activity that had been assigned to the Grand Bahama Port Authority. The specific provisions were to remove the conflict and make clear that prerogative power had been removed from the Central Government to the Grand Bahama Port Authority in the Port Area."

46. Finally, in the case of *Commonwealth Brewery Limited v Attorney General*, Sawyer CJ (as she then was) opined:

"Considering the Hawksbill Creek Agreement as a whole, it appears to me that to the extent of the Port Area, the Government gave the Port Authority the powers which one would normally associate with Local Government authorities and thereby created a special enclave in order to encourage the development of that particular part of the Bahamas.

In the circumstances, I would hold that the exclusive license granted to the plaintiff created a monopoly to brew beer for the entire Bahamas except for the Port Area."

47. In my judgment, the power under the Road Traffic Act to issue a taxi license had been removed from the Government to the Port Authority so far as the license to operate a taxi business within the Port Area is concerned. So, once the Port Authority exercised its prerogative power, assigned to it by the Government under the Agreement, and issued the license to the applicant and the applicant had satisfied the Road Traffic authorities that it had complied with the requirements for having its vehicle registered,

the Inspector was obliged to inspect, and the Controller was obliged to register, the applicant's vehicle and to issue a license plate therefor. To the extent that they refused to do so firstly, because the applicant was a new company; secondly, because the applicant did not have a license from the Government to operate a taxi company in the Port Area; and thirdly, because of the alleged Government moratorium on the issuance of taxicab license plates, the Inspector and the Controller, in my judgment, took into account irrelevant considerations and, therefore, acted illegally, procedurally improperly and *ultra vires*, particularly as the applicant was seeking to have its vehicle registered with a "bonded" license plate that would restrict its movement to the Port Area.

48. Further, as regards the alleged moratorium, I accept the submission of counsel for the applicant that even if there was a moratorium on the issuance of taxicab license plates, and no evidence other than the Controller's word has been given in that regard, such moratorium would not extend to the Port Area.
49. I find support for that finding in the case of Commonwealth Brewery Limited in which the Government had given an exclusive license under the provisions of the Spirits and Beer Manufacture Act to Commonwealth Brewery Limited to brew or make beer in the Bahamas for a period of fifteen years – in effect, in my opinion, placing a moratorium on the grant of brewing licenses for fifteen years. In that case, Sawyer CJ (as she then was) held that "the exclusive licence granted to the plaintiff [Commonwealth Brewery Limited] created a monopoly to brew beer for the entire Bahamas except for the Port Area."
50. The applicant claims damages. However, the applicant has not alleged, pleaded or proven the commission of a tort. "In limited circumstances, an applicant may be entitled to damages or restitution. There is, however, no right to damages for unlawful action per se; breach of some recognized tort must be established." (see De Smith, Woolf and Jowell's Judicial Review of Administrative Action 5<sup>th</sup> ed., page 25 para. 1-043).
51. The learned authors say further that:

"A fundamental tenet of English law is that the failure of a public body to act in accordance with public law principles of itself gives no entitlement at common law to compensation for any loss suffered. Nor does the careless performance of a statutory duty in itself give rise to any cause of action in the absence of a common law duty of care in negligence to a right of action for breach of statutory duty. To recover damages, a recognised cause of action in tort must be pleaded and proved. In short, while in some cases it may be a necessary condition, it is never a sufficient one for the award of damages that the act or omission

complained of be "unlawful" in a public law sense." (De Smith, Woolf & Jowell, "Judicial Review of Administrative Action", 5th ed., para. 19-003).

52. And at page 761, para. 19-008:

"Holding a decision to be unlawful does not involve a finding that it was taken negligently; a decision without legal authority may nevertheless have been the product of very careful consideration by a decision-maker."

53. In the result, I would grant the relief sought by the applicant namely:

- 1) An Order of Certiorari quashing the said decision of the Inspector of Road Traffic not to inspect the Applicant's vehicles and the decision of the Assistant/Deputy Controller of Road Traffic not to license and register the Applicant's vehicles; and
- 2) An Order of Mandamus requiring the Inspector of Road Traffic to inspect and the Controller of Road Traffic to register the applicant's vehicles to be used in its taxi company business and to issue "bonded" identification plates therefor.
- 3) Costs of the action to be paid by the respondents to the applicant, to be taxed if not agreed.

Delivered this 11<sup>th</sup> day of May A.D. 2012

Estelle G. Gray Evans

Justice

