

IN THE SUPREME COURT OF BELIZE A.D. 2019

CLAIM NO 837 OF 2019

BETWEEN

(DAVID TITLE
(TRUMAN DAVIS

1ST CLAIMANT
2ND CLAIMANT

(
(AND

(
(THE PROPRIETORS, STRATA PLAN NO 57
(REGISTRAR OF LANDS

DEFENDANT
INTERESTED PARTY

Before: The Hon Justice Westmin R.A. James (Ag)

Date delivered: 7th June 2021

Appearances: Ms Stevanni Duncan for the Claimants

Ms Stacey Castillo for the Defendants

JUDGMENT

1. This case is about the setting up of and amending by-laws under the Strata Titles Registration Act Chap 196 ('the Strata Act') and the appointment of an Administrator.

Factual Background

2. The Claimants are both owners of strata lots within the Las Terrazas Resort and Residences ('the Defendant') a development located in Ambergris Caye that has been registered as a strata plan under the Strata Act on 24th August 2007. The Strata Plan has a total of 47 registered Strata Lots.
3. Both Claimants physically reside in their strata lots. Many of the other owners including Las Terrazas Belize Ltd, the original developer of the project and owner of strata lots do not physically reside in their strata lot but instead join the rental pool and allow their strata lots to be used as resort accommodation whereby they get a percentage of the revenue generated from the rental of their strata. The unit

rental business is operated as a resort, called Las Terrazas Resort ('the Resort'). The Resort is operated by Coral Management Group Limited ('Coral Management').

4. The Defendant is the body corporate that was formed in accordance with the Strata Act and manages the development. The Defendant delegated its primary management functions to a management company known as Sands Management Limited ('Sands Management'). Sands Management is responsible for taking care of and managing the common areas, which included preparing budgets, billing and collecting certain fees from the strata unit owners.
5. On 24th August, 2007 Amended By-Laws ('Amended By-Laws') was registered on behalf of the Defendant. Paragraph 4 of the Amended By-Laws creates a Reserve Fund to cover non-recurring operating and or maintenance costs that may arise from time to time. At a General Meeting of the Defendant held on 2nd May 2018 several motions were passed including amending the by-laws ('Further Amended By-laws') so that the Executive Committee could hold office for two years rather than being elected every year. At the meeting not all proprietors were present and not all proprietors voted. At the last annual general meeting held in November 2019 the newly elected Executive Committee would serve for a period of only one year and there has been no change to the by-laws registered at the Land Registry.
6. The Claimant in its Amended Claim Form and Statement of Case requested the following reliefs:
 1. *A Declaration that the by-laws filed by the Defendant with the Registrar of Lands is invalid, unlawful, null and void;*
 2. *An order directing the Registrar of Lands to strike out the invalid, unlawful by-laws from the Strata Titles Register with respect to the Defendant Strata Pan;*
 3. *A Declaration that the applicable Bylaws for the Defendant are contained in the First and Second Schedule to the Strata Titles Registration Act;*
 4. *A Declaration that the Executive Committee is to be elected at every annual General Meeting;*
 5. *A Declaration that the Claimants are not liable for the following fees and assessments: -*
 - a. *All fees established by the unlawful by-laws;*
 - b. *Late fees; and*
 - c. *Fees for the Rental Pool (Hotel Resort)*
 6. *A Declaration that the Claimants are only liable to fees and assessments charged in relation to:-*

- a. *Insurance effected in the name of the Corporation, The Proprietors, Strata Plan No. 57;*
 - b. *Maintenance, utilities and repair in relation to common areas;*
 - c. *Utilities actually paid by the Defendant which are attributable to the Claimants' units;*
- 7. *An Order that an independent administrator be appointed pursuant to section 9(2) of the Strata Titles Registration Act to assess quantum of the fees charged and payable by the Claimants to the Defendant.*
- 8. *An Order directing that all illegal fees collected by the Defendant be returned to the Claimants;*
- 9. *An Order that the affairs of the Defendant be separated from the Rental pool Program (Las Terrazas Belize (Resort));*
- 10. *Costs;*
- 11. *Such further or other reliefs as the Court may deem fit.*

7. The parties agreed to the following issues for determination by the Court:

- 1. Whether the Amended By-Laws of Strata Plan No 57 are valid;
- 2. Whether the Further Amended By-Laws are valid;
- 3. Whether the Claimants are liable for the following fees and assessments
 - a. Contributions imposed and created by the Amended By-Laws such as the Reserve Fund;
 - b. Late Fees;
 - c. Insurance fees not effected in the name of the Defendant; and
 - d. Fees for the Resort/Rental Pool, including maintenance fees, utilities, repairs, and employee salaries for the purpose of the Resort/Rental Pool
- 4. Whether the Claimants are liable for utility fees not attributable to their individual units and the common areas of Strata Plan No 57;
- 5. Whether an independent administrator should be appointed pursuant to section 9(2) of the Strata Titles Registration Act to assess quantum of the fees charged and payable by the Claimant to the Defendant;
- 6. Whether the Defendant should reimburse the Claimants for any paid fees which the Court deems to have unlawfully levied;
- 7. Whether the affairs of the Defendant are intertwined with the affairs of the Resort/Rental Pool Program, and if so, whether the affairs of the Defendant should be separated from the Rental Pool Program.

Whether the Amended By-Laws of Strata Plan No 57 are valid

8. I intend to deal with this issue first, as it is the main legal issue involved in this case. This question is a very important one, not only for the parties involved in this case but may hold significance for other developments in Belize where there may have been this practice of filing Amended By-Laws at the same time as the registration of the strata company.
9. Part V of the Strata Act, addresses the main matter which is at issue in this case: Management and Administration of strata lots.

“15(1) Subject to the provisions of this Act, the control, management, administration, use and enjoyment of the strata lots and the common property contained in every registered strata plan shall be regulated by by-laws.

(2) The by-laws shall include –

(a) the by-laws set forth in the First Schedule, which shall not be amended or varied except by unanimous resolution;

(b) the by-laws set forth in the Second Schedule, which may be amended or varied by the Corporation.

(3) Until by-laws are made by a Corporation in that behalf, the bylaws set forth in the First Schedule and the Second Schedule shall, as and from the registration of a strata plan, be in force for all purposes in relation to the relevant parcel and the strata lots and common property therein.

(4) No by-law shall operate to prohibit or restrict the devolution of strata lots or any dealing therewith or to destroy or modify any easement implied or created by this Act. (5) No amendment or variation of any by-law shall have effect until the relevant Corporation has lodged with the Registrar a notification thereof in such form as may be prescribed and until the Registrar notifies the Corporation that he has made reference thereto on the relevant registered strata plan.

(6) Every Corporation shall, on the application of a proprietor or any person authorized in writing by him, make available for inspection the bylaws for the time being in force. (7) By-laws for the time being in force shall bind every Corporation and the proprietors to the same extent as if such by-laws had respectively been signed and sealed by such Corporation and each proprietor and contained covenants on the part of such Corporation with each proprietor and on the part of each proprietor with every other proprietor and with such corporation to observe and perform all the provisions of the by-laws.”

10. The approach to construction of a statutory provision is quite clear and trite. The starting point is the ordinary and natural meaning of the language used. However, it has long been established that statutory provisions must be construed in their context, and the Court must have regard to the statutory purpose both of the

Statute as a whole and the specific provisions in particular. See *Bennion, Bailey and Norbury on Statutory Interpretation para Section 11.1-11.2*

11. Section 15(3) clearly spells out what should occur upon registration of a strata Corporation, that is, until the Corporation registers its own bylaws, in the meantime the bylaws set forth in the First Second Schedules shall be in force. That is the ordinary meaning of the words used in section 15(2) and 15(3) of the Act. The '*Corporation*' means, in relation to any registered strata plan, a body incorporated under the provisions of section 5 of this Act. Section 5 states '*the proprietors of all the strata lots contained in any strata plan shall, upon registration of the strata plan, become a body corporate.*'
12. Further, the by-laws in the First Schedule and Second Schedule provides how the by-laws are to be amended. For example the First Schedule is not to be amended or varied except by unanimous resolution. The Act defines "*unanimous resolution*" as '*a resolution unanimously passed at a duly convened meeting of a corporation at which all persons entitled to exercise the power of voting conferred by or under this Act are present personally or by proxy at the time of the motio.*' (My emphasis).
13. The statutory by-laws also set out provisions governing the holding of general meetings by the Corporation, the election, powers and duties of the Executive Committee, and the procedure for voting by proprietors. In the First Schedule under the rubric General Meetings, it provides:
 4. *A general meeting of proprietors shall be held within three months after registration of the strata plan.*
 8. *Seven days notice of every general meeting specifying the place, the date and the hour of the meeting and, in case of special business, the general nature of such business, shall be given to all proprietors and registered first chargees who have notified their interest to the Corporation, but accidental omission to give such notice to any proprietor or to any registered first chargee of non-receipt of such notice shall not invalidate any proceedings at any such meeting*
14. It is clear to me that upon registration of a strata the by-laws are the by-laws in the First and Second Schedule of the Act until the corporation, that being the strata corporation convenes a meeting and amend the by-laws. Parliament has gone further and ensured in Section 15, that any amendment or variation of any of those by laws must be lodged with the Registrar; and the Corporation receive a notification from the Registrar to the Corporation that he has made reference to those amendments on the relevant registered strata plan.

15. In the present case the corporation was incorporated on 24th August 2007 and the Amended by-laws were lodged on the same day that the strata plan was registered, which means that the Defendant corporation would have had to have a meeting on that date to approve the Amended By-Laws. First there is no evidence that such a meeting took place now would it have been a validly convened meeting since in order to call a general meeting you need to give 7 days' notice of the meeting even if the corporation at that time was controlled solely by one proprietor. This of course did not happen and so there could have been no valid meeting and no resolution passed before the Amended By-laws were registered. Therefore, there could be no valid registration and no valid Amended By-laws.
16. The Defendant in submissions indicated that the Defendant's witness Mr Shabir Walji gave evidence that was unchallenged which established that the decision to amend the by-laws was unanimous and was passed at a meeting of the corporation. When one looks at this evidence it does not bear this out.
17. Mr Shabir Walji in his witness statement stated that in or around June of 2007, Las Terrazas (Belize) Limited passed a unanimous resolution approving amended by-laws to regulate Strata Plan No. 57 which were to be registered upon the Strata Plan being registered. He attached a document from Las Terrazas (Belize) Limited dated 20th June 2007 before the Strata was even formed indicating that the company (Las Terrazas) approved the Strata Plan and Sale Documents, Management Agreements and the by-laws and unanimously amended and once registered will serve as the guiding documents for the Strata Corporation. It goes without saying that Las Terrazas (Belize) Limited is clearly not the Corporation which did not exist at the time and so could not unanimously amend the By-laws at a time before the Corporation existed.
18. That does not prevent a corporation/strata subsequent to its incorporation ratifying Amended By-laws that were formulated before the Strata once the relevant procedure under the Strata Act was being followed. Mr Shabir Walji in his witness statements went on to say that on 28th August 2007, the first meeting of the PSP 57 was held, where it was noted that the Second Schedule of the by-laws contained in the Strata Titles Registration Act Chapter 196 was amended. The attachment doesn't bear this out at all. The Meeting Minutes which are unsigned for August 28, 2007 was for Las Terrazas (Belize) Strata Corp. The minutes stated that the approved strata plan and accompanying documents were submitted end of June 2007 and recorded at the Lands office on August 24, 2007. There was

nothing contained therein about unanimously approving the Amended By-Laws or ratifying the Amended by-laws. What it does do is confirm that the Amended By-Laws which were submitted with the Strata incorporation documents were not subject to a unanimous approval at a meeting of the strata after the registration of the Strata nor was it passed or confirmed at the first meeting of the Strata. There is further questions as to whether that meeting was a lawfully convened meeting being called earlier than the 7 days' notice period required before the corporation holds a general meeting.

19. There has been no evidence adduced that the Amended By-Laws were ever unanimously passed at a validly held general meeting before the Amended By-Laws were registered. It is therefore clear that the Amended By-Laws are not validly passed and null and void. In light of this, the only binding by-laws on the Strata Plan are therefore those provided in the Act itself in the First Schedule and the Second Schedule.

Whether the Further Amended By-Laws are valid

20. The Defendant in their submissions have conceded that the decision contained in *Claim No. 268 of 2012 The Proprietors, Strata Plan 64 v Reef Village Estates Ltd* that the nature of the amendment contained in the Further Amended By-Laws required a unanimous vote to be implemented. This was not done, and the Further Amended by-laws were not registered and so they conceded that the Further Amended by-laws are invalid and the Defendant is to reimburse the Claimants for all late fees it collected from them if any.

Whether the Claimants are liable for the following fees and assessments

- (i) Contributions imposed and created by the Amended By-Laws such as the Reserve Fund;*
- (ii) Late Fees;*
- (iii) Insurance fees not effected in the name of the Defendant; and*
- (iv) Fees for the Resort/Rental Pool, including maintenance fees, utilities, repairs, and employee salaries for the purpose of the Resort/Rental Pool*

(i) and (ii) Reserve Fund & Late Fees

21. With the declaration that the Amended By-Laws are invalid and the concession that the Further Amended by-laws are invalid the fees that were imposed other than in accordance with the Strata Act are also not enforceable and are to be

refunded to the Claimants. This includes the Reserve Fund and the late fees created by the Amended By-Laws and Further Amended By-Laws.

(iii) Insurance

22. It is accepted by the Claimants that under the Strata Act Section 6(1), the duties of the Corporation shall include the following- (a) to insure and keep insured the building to the replacement value thereof against fire, earthquake, hurricane and such other risks as may be prescribed, unless the proprietors by unanimous resolution otherwise determine. Section 6(2)(a) gives the powers to the Corporation *'to establish a fund for administrative expenses sufficient in the opinion of such Corporation for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any of its other obligations.'* The fund as highlighted by Justice Griffith in *The Proprietors, Strata Plan 64 v Reef Village Estates Ltd (supra)* therefore applies to 3 categories of expenses – insurance premiums; control, management and administration of common property; and for the discharge of any of the corporation's other obligations.
23. While the Claimants accepted that insurance premium is a legitimate expense of the Strata corporation they argued the premiums must be related risks and perils faced by the Defendant and the Defendant only. The insurance coverage was previously in the name of Las Terrazas (Belize) Limited but the premises that was covered was the insured's premises only situated at Mile 41/2 North Ambergris Caye, San Pedro Town, Belize District, BELIZE. The evidence shows that from the 25th October, 2019 the name of the policyholder was amended to read "Las Terrazas (Belize) Limited/Coral Management Group Ltd/Sands Management Ltd ITF Las Terrazas Strata/Coral Development Co. Ltd/Island Reservation Services Ltd. The Claimants argued that all of these insured would increase the premium rate and so the Claimants do not know what they are paying for. The Defendant's witness has indicated that they could list 5-10 companies at no additional costs. He said that the total costs for insurance for a strata owner based on the square footage of the individual unit.
24. This Court is not as concerned with the costs as opposed to the what the Corporation is paying for and whom it covers. The insurance coverage as evidenced by the addendum covers loss of profit (business interruption) and wages of the name insureds. The proprietor of all the strata lots contained in any strata plan is the Corporation and the Corporation is not to be operating for profit. The Court thus agrees with the submission of Counsel for the Claimant and finds

that insurance premium must be for the benefit of the Corporation not for another entity that is not the Corporation unless voted otherwise by the Corporation. Whether the insurance premium costs any more does not matter as this is providing a benefit to other entities outside the corporation that does not have to pay for such cover on their own. It may be that these entities would charge the Corporation for that expense as part of their management fee or other contractual obligation with it but the Corporation cannot pursuant to section 6 provide insurance for other companies who are not owned by the Corporation. The inclusion of names of entities other than the Corporation should have been put to a unanimous vote.

25. I therefore find that the Corporation should adjust the insurance policy within two months to be that of the Corporation alone as insured or obtain permission from the strata owners at a General Meeting to include other entities as insureds.

(iv) Fees for the Resort/Rental Pool, including maintenance fees, utilities, repairs, and employee salaries for the purpose of the Resort/Rental Pool

26. All parties agree that the Claimants or residents are not to be liable for fees for the Resort/Rental Pool including maintenance fees, utilities, repairs, and employee salaries for the purpose of the Resort/Rental Pool therefore a declaration stating this is otiose.

Whether the Claimants are liable for utility fees not attributable to their individual units and the common areas of Strata Plan No 57;

27. All parties agree that the Claimants or residents are not to be liable for utility fees not attributable to their individual units and the common areas of the Strata therefore a declaration stating this is also otiose.

28. The Claimants claim here was that one of their electricity bills was extremely high in November 2019 which was BZ\$2,785.84. The Claimants argued that the electricity bill itself does not specifically state that the bill relates to the Claimant's unit. The Defendant's testified that the meter number on the bill identifies the relevant unit. I do not find that there is enough evidence to demonstrate that the electricity bill was for any other unit or thing. While the bill seems extremely high, there is no evidence that was as a result of the Defendant. The bill could have been an error on the part of the electricity company and the Claimant may be best to direct the query to that entity. That being said the Defendants could do a better job in ensuring that every billable item attributable to each unit has a specific name or

unit number on the relevant bill and seem more transparent. As indicated both sides agree that the Claimant is not liable for any other utility other than the unit and the common area.

Whether an independent administrator should be appointed pursuant to section 9(2) of the Strata Act

29. The power to appoint an administrator is set out in section 9 of the Strata Act. It is to be noted that the section does not speak of removal of the Executive Committee but that would seem to be a necessary implication. Sub-sections 9(1), (2) and (3) provide as follows:

'Administration

9(1) Every corporation, or any person having an interest in a strata lot may apply to the court for the appointment of an administrator.

(2) The court may, in its discretion on cause shown, appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit. The remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Law.

(3) The administrator shall, to the exclusion of the corporation, have the duties and powers of the corporation or such of those duties and powers as the court shall order.
...'

30. In *Lum v. Strata Plan VR 519 [2001] BC.J NO 641*, Harvey, J. set out some factors to be considered when the Court is exercising its jurisdiction to appoint an Administrator to a Condominium Corporation. These include:–

a) whether there has been established a demonstrated inability to manage the strata corporation;

b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation;

c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation;

d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation;

e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

31. The Claimants argued that the legislation in the case of *Lum* was different than that in the present case. However, the Claimant accepted that the approach was

adopted by the Grand Cayman Court in *Clappison et al v The Proprietors, Strata Plan No. 381* with the very same provision as Belize. I disagree the difference in wording of the legislation is of much significance. The Court was setting out considerations for a Court to take into account when deciding to exercise its jurisdiction to appoint an Administrator to a Strata Corporation under section 9. The Claimant has presented no other authority to displace these considerations.

32. While in the case of *The Proprietors of Strata Plan No. 49 v Munteer Investments Ltd BZ 2015 SC 25* Justice Arana, as she then was, found that the resolution to adopt new by-laws was not unanimous as required by the Strata Act and even though registered they were not legal or valid since they were not passed in keeping with section 15 of the Strata Act. All fees which the Strata sought to collect pursuant to those new by laws were therefore not valid. Justice Arana went to say:

“I have noted that Ms. Munteer has repeatedly said (through her attorney) that she would like the affairs of the Corporation investigated to determine the basis on which the quantum of fees has been assessed. In light of my decision in favour of the defendant, I will also order that an independent administrator be appointed pursuant to section 9(2) of the Strata Titles Registration Act to assess quantum of the fees charged and payable by the defendant to PSP No. 49. I set 6th July, 2015 as the date for the parties to return to court for further directions on the appointment of an administrator.”

33. The Honourable Justice Arana however never set out the considerations she took into account when making that order. In absence of such authority, I adopt the approach and considerations as set out in *Clappison* and *Lum*.
34. The Defendant has submitted that there has been no real attempt to identify/satisfy any of the grounds laid down in *Lum (supra)*. The Defendant referred to the case of *Clappison et al v The Proprietors, Strata Plan No. 381* in which the Court of the Grand Cayman held that the democratic government of a Strata Corporation should not be overridden by the Court except where absolutely necessary. The case referred to a number of cases on this issue. It stated that a similar jurisdiction to appoint an administrator exists in Australia. It referred to the case of *Parker v The Owners of Timberside Villas-Strata Plan 27426 [2006] WASAT 254*. This was a decision of the State Administrative Tribunal where the Tribunal described the remedy of appointing an administrator as ‘an extreme remedy’ and a ‘remedy of last resort.’ In that case an application was made for the appointment of an administrator under section 102 of the *Western Australia Strata Titles Act 1985*. The application was related to other proceedings in which the applicant sought an

order for the termination of the management agreement between the respondent strata council and a strata manager. The strata manager was a company related to the developer of the retirement village concerned. In the related proceedings, an order was made to shorten the term of the management agreement. The application for the appointment of an administrator was refused.

35. The Defendant also referred to the Canadian case of *McGowan v Strata Plan NW1018 [2002] BCSC 673* as a good example of the height of the bar that must be attained for the Plaintiffs to succeed. In *McGowan* the applicant raised a host of complaints including alleged double charging due through paying both salaries and management fees and retaining employees rather than using independent contractors. The Court there stated that the complaints: -

'are not such as to demonstrate substantial misconduct or mismanagement, nor do they reflect an inability to manage the Corporation. The examples given are spread over nearly eight years of Corporation management and in a context in which differences of opinion have unfortunately become somewhat personal on both sides (paragraph 71).

36. They further pointed out that there is no independent expert accounting evidence to assist the Court.

37. In the present case the concerns of the Claimant involve the lack of transparency in their apportionment of expenses and the clear conflict of interest that exists. The Claimant suggest that the Executive Committee of the Defendant cannot fairly manage the affairs of the Corporation because they are principals in the management company, Sands Management and in Las Terrazas Belize Ltd and in Coral Management. The Claimants allege that the principals of Las Terrazas Belize Ltd are in effect on both sides of every transaction, they control the Executive Committee of the Strata on behalf of the owners on the one hand and on the other they operate the Rental Pool operation and manage the strata for profit through another company. Furthermore any increase of costs apportioned to the Strata actually increases their management fee. The Claimants argue that the entire system lends itself to the encouragement to load expenses against the Strata which will be paid by owners and therefore increases the profits of the proprietors of Las Terrazas (Belize) Limited. They have also suggested that the Strata is being operated for their own benefit at the expense of the Claimants.

38. The Defendant has argued that while this ground for the appointment of an Administrator was raised in submissions and cross examination this does not form

part of the Claimant's pleaded grounds and should not be taken into account by the Court. I agree with the Defendants while I am concerned about the conflicts of interest in the Executive Committee with the Management Company and connected companies to this Strata, I restrict myself to consider only the pleaded grounds.

39. In my view, like in *Clappison* the Court should not interfere in the management of a Strata Corporation unless absolutely necessary and where clear evidence is presented that shows the mismanagement, fraud or that the majority uses its might to unfairly oppress the minority unit owners.
40. In submissions the Claimants argued that there has been demonstrated substantial misconduct or mismanagement in relation to the affairs of the strata corporation and the appointment is necessary to bring order to the affairs of the Corporation. I disagree. The Corporation did not register the Amended By-laws but rather Las Terrazas (Belize) Limited did. The Defendant has conceded the Further Amended By-Laws are invalid and the Claimants will be refunded any invalid fees. The relation of the parties was known to all and the Claimants and the other owners of the Strata including the Claimants could themselves sit on the Executive Committee to effect changes they see as necessary. Complaints about transparency in billing does not rise to the level of fraud or mismanagement needing an Administrator of the Corporation to take over control. The billing obviously shows that there is a difference in price to those in the rental pool and those owners that are not. Transparency does not mean according to the satisfaction of the Claimants but that is reasonable. While the billing could do with some tweaking there is no evidence of complete mismanagement or fraud. In fact, because of the relationship of some of the proprietors and the related companies it would be in their best interest to manage the property as best as possible. The assessing of monies to be returned to the Claimants is a relatively easy task that an accountant can do and so an Administrator is not needed. I therefore hold that the Claimants has not demonstrated substantial misconduct or mismanagement in relation to the Corporation or oppression to the level requiring an Administrator.
41. In the absence of any demonstrated mismanagement or fraud and ever conscious of the inevitable expense involved in the appointment of an Administrator, I decline to exercise my discretion to appoint an Administrator.
42. I would however order an independent auditor conduct an audit of the finances of the Defendant in order to assess what expenses are to be returned to the Claimants relative to the above ruling. I would hope that this auditor assists the

Defendant to coming up with a billing system and budget that would help make clearer what are the charges to each individual owner and those to the Rental pool that might. This might give the Claimants and all strata owners a little more comfort in the accounting of the Strata.

Whether the affairs of the Defendant are intertwined with the affairs of the Resort/Rental Pool Program, and if so, whether the affairs of the Defendant should be separated from the Rental Pool Program.

43. The extent of the relationship between the Defendant and the Rental Pool owners is a question for the Strata corporation itself. The Claimant knew that arrangement they were entering into it is even in the name of the place. The Claimants cannot dictate to the other strata owners who are also a part of the Corporation what they can and cannot do with their units and how the corporation is to deal with them once it is in accordance with Act and the by-laws. Having regard to the other declarations and the audit previously made the Executive Committee and the Corporation will deal with this issue.

Order

44. In light of the above the Court makes the following orders:

1. The Amended by-laws filed by the Defendant on the 27th August 2007 with the Registrar of Lands is invalid, unlawful, null and void;
2. The Registrar of Lands to strike out the invalid, unlawful by-laws from the Strata Titles Register with respect to the Defendant Strata Pan;
3. The Further Amended By-laws are invalid, unlawful, null and void;
4. The applicable by-laws for the Defendant is as contained in the First and Second Schedule to the Strata Titles Registration Act;
5. The Claimants are not liable for the fees established by the Amended by-laws or the Further Amended By-Laws; and
6. Defendant amend its insurance cover to be in the name of the Corporation alone or get approval from the strata owners to include other entities on the insurance policy;
7. The Court will decline appointing an independent Administrator be appointed pursuant to section 9(2) of the Strata Titles Registration Act;

8. An independent auditor be appointed by the Corporation to conduct and audit of the finances with a view to assess what fees and expenses are to be returned to the Claimants with liberty to apply; and
9. The Claimant be awarded 75% of the prescribed costs in this claim.

/s/ WJames

Westmin R.A. James

Justice of the Supreme Court (Ag.)