

1 CHAMBERS 9:30 A.M.

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3
4 IN THE GRAND COURT OF THE CAYMAN ISLANDS

5
6 CAUSE NO. 498 OF 1993



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11
12 BETWEEN: THE PROPRIETORS OF STRATA PLAN
13 NO. 39 (A CORPORATION)

14
15 ALICE M. BAUER

16
17 LOUISE J. STEVENS

18
19 CHARLES R. STEVENS

20
21 WILLIAM K. BECK

22
23 AURELLA E. BECK

24
25 CAPE & GULF INVESTMENTS CO. LTD.

26
27 **PLAINTIFFS**

28
29 AND: BEACH BAY DEVELOPMENT CO. LTD.

30
31 THOMAS H. GUEST

32
33 **DEFENDANTS**

34
35
36 **APPEARANCES:**

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38 Mr. Ramon Alberga Q.C. instructed by Mr. Helman of Quin & Hampson
39 for the plaintiffs.

40
41 Mr. Steven Roy for the defendants.
42
43
44

RULING

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2
3 This dispute is between the Strata Corporation and owners of the Beach Bay
4 Development as plaintiffs and the Development Company and its principals,
5 as defendants. The dispute relates to undeveloped land at Beach Bay and as
6 to whether it belongs to the Strata Corporation and in its Strata Plan No. 39.

7
8 After many interlocutory steps in the action, the parties have finally arrived
9 at a settlement with the assistance of their attorneys. They have submitted a
10 draft consent order setting out the terms of the settlement, for the approval
11 of the court.

12
13 In its original form propounded on 25th March 1996, the draft consent order
14 would embody a declaration that the beach area shown in yellow on the plan
15 annexed in schedule I, including the jetties and groins, would be henceforth
16 contained in the area comprised in Strata Plan No. 39.

17
18 Other areas were to be so regarded as well, but the difference was to be that
19 the beach area would immediately be incorporated in the register by
20 amendment or rectification of the Strata Plan No. 39. See original draft
21 paragraph 4.

22
23 As that aspect of the declaratory relief carried with it the certainty of the
24 directions to the Registrar contained in paragraph 4, I saw no difficulty with
25 it. As the beach area comes within parcel 109, itself the subject of dispute, I
26 saw no difficulty with so declaring and directing - questions of subdivision,
27 if they arise, are addressed by section 3 subsection (5) of the Strata Titles
28 (Registration) Law.

29
30 I did have concerns, however, about the other areas mentioned in the
31 original draft order paragraph 1, ie: subparagraphs (ii) to (v). This was so
32 because as read with paragraph 5, they were each being declared to become
33 part of the common property to be contained within Strata Plan No. 39 - but
34 only upon completion of the phase of development to come, which would
35 be contained or comprised in that area. In other words, only upon such
36 future and unspecified date and events.
37

1 Paragraph 6 sought to make it clear that that would include all areas of
2 parcels 12 (f), 109 and 110 which are not subsequently developed.

3
4 I did not approve the order in that form. My primary concern then was the
5 form of declaratory relief being sought insofar as it would amend or purport
6 to amend the Register upon those future and unspecified date and events.

7
8 Having heard Mr. Alberga on the 7th October, 1996 and having read and
9 considered the authorities he cited from Zamir and Woolf: The Declaratory
10 Judgment 2nd Ed. 1993 Sweet & Maxwell.

11 I reconsidered the matter. I was persuaded that the declaratory relief sought
12 should be granted, particularly as it came in the context of an order to be
13 made by the consent of the parties.

14
15 If there was to be no finality to the manner of expression of the future
16 declaratory relief, but the parties trusted each other to settle their dispute on
17 that basis, then the court should not be overly concerned to tie its order to
18 what may be described as an immediately binding declaration of rights. On
19 that basis also I was prepared to relinquish the suggested requirement that
20 the defendants be trustees of the undeveloped land for the benefit of the
21 plaintiffs, the suggestion envisaged that pending development the equitable
22 interests of the plaintiffs would become a legal registrable interest when the
23 development was complete.

24
25 While I, for my part, can see no reason why the defendants would object to
26 themselves being so declared Trustees of the rest of the land to be later
27 contained in the common property, I was not about to impose that
28 requirement upon the parties.

29
30 I was persuaded in particular from the following passage from the textbook
31 (op. cit.) quoting Lord Diplock in Gouriet v Union of Post Office Workers
32 [1978] A.C. 455 at 501G:

33
34 “The jurisdiction of the court is not to declare the
35 law generally or to give advisory opinions: it is
36 confined to declaring contested legal rights,
37 subsisting or future, of the parties represented in

1 the litigation before it and not those of anyone
2 else”.

3
4 And later at page 21 of the text at paragraph 2:23; referring to the earlier
5 case of Guaranty Trust Co. of New York v Hannay & Co. [1918] 2 K.B.
6 623:

7 “The decision in Guaranty Trust finally
8 established that Ord. 25 R. 5 (of the R.S.C.)
9 validly empowers the courts to make declarations
10 about any sort of legal relationship, whether or not
11 a cause of action in the traditional sense exists”.

12
13 I therefore was satisfied that the declaratory relief sought could in principle
14 be granted. I did, however, express my preference that some reference be
15 made to a time frame - both for the protection of the parties and to lend
16 clarification and certainty to the order of the court. Hence the new draft,
17 paragraph 13. All that that requires is the acceptance by the defendants that
18 the development should take place within a reasonable time - a condition
19 which would, in any event, be implied by the court, if not expressed. Today
20 for reasons not in my view properly explained, there is to be objection also
21 to that on the part of the defendants.

22
23 As the plaintiff is prepared to do without that express provision, and in
24 order to allow the settlement to proceed, so will I.

25
26 I had raised one other point - that was as to the apparent inconsistency in the
27 draft in having paragraph 6 of the original draft stand on its own outside of
28 paragraph I when the declaratory order was fully expressed in paragraph I.
29 Paragraph 6 would also have been an expression of declaratory relief to the
30 effect that parcel 109 would become contained in the common property
31 after the developments are completed.

32
33 In the new draft paragraph 6 is deleted and effectively the same provision
34 inserted in paragraph I subparagraph (vi) instead, where it more
35 appropriately belongs.

36
37 But if the parties were agreed as to its meaning and effect in the original
38 paragraph 6, I would not have allowed that change to be a stumbling block

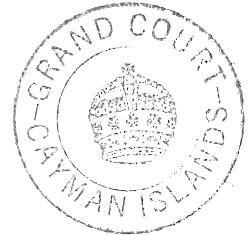
1 either. The change was proposed, as I understood it, with the willingness, if
2 not consent, of both sides.

3
4 I am prepared to allow the reversion to the original paragraph 6 now that
5 this written ruling is on record as clarifying its intent so far as the court
6 reads it and insofar as the parties' intention is understood by the court.
7 Accordingly, I am now prepared to revert to the original draft and to
8 approve it.

9
10 This note of my reasons for so doing is to be regarded as part of the record
11 should any issues arise in the future as to the construction of the consent
12 order.

13
14 No order as to costs.

15
16
17
18 A. Smellie
19 Judge of the Grand Court



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21 Dated this 22nd day of January 1997