

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 400 OF 2010

IN THE MATTER OF SECTION 9 OF THE STRATA TITLES REGISTRATION LAW (2005 REVISION)

AND IN THE MATTER OF THE REAL ESTATE COMPANY LIMITED AND THE PROPRIETORS OF STRATA PLAN
#182

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on
at or as soon thereafter as counsel can be heard, by counsel on behalf of The Real
Estate Company for the following relief:

1. That the Court appoints an administrator to act in place of the Executive Committee of The Proprietors of Strata Plan #182
2. Such further and other relief that the Court deems fit.
3. An order that the costs of and incidental to this application are paid by The Proprietors of Strata Plan #182.

AND FURTHER TAKE NOTICE that the grounds of this application are:

1. The plaintiff is the registered proprietor of Unit #3 of Strata Plan #182 also known as 'Caymanian Village'. The defendant is a body corporate consisting of a collection of all the Strata Proprietors contained within Strata Plan #182 in accordance with Section 5(1) of the Strata Titles Registration Law (2005 Revision) (hereinafter 'the Law').
2. The control, management and administration of the strata units and common property contained in the strata plan and forming the defendant corporation are regulated by by-laws in accordance with Section 21 of the Law. Those by-laws having been registered with the Department of Lands and Survey on the 15th May 1998.
3. The Executive Committee is a body constituted under the registered by-laws of the Defendant and empowered under bye-law 23 that;
'there must be an Executive Committee of the Corporation which must, subject to an restriction imposed or direction given at a general meeting, exercise the powers and perform the duties of the Corporation.'
4. The by-laws of the defendant set out, inter alia, the powers and duties of the defendant and in particular state as follows:



Definitions

"the Corporation" means the Proprietors of Strata Plan 182 strata corporation being The Proprietors, Strata Plan No. 182.

"the Developer" means Le Habitat Construction Lts. or its nominee.

"the Executive Committee" means the Executive Committee of the Corporation, constituted under these by-laws.

"Owner" means Mr. Henry E Bodden his heirs, personal representatives or assigns;

Commencement Conditions Precedent

2. Notwithstanding anything to the contrary in these bye-laws, until the Owner is no longer the Proprietor of at least five (5) of the Strata Lots or until the ____ day of _____, 19____, whichever first occurs, the following provisions have effect and will prevail :-

- (a) Extraordinary general meetings of the Corporation may be called only at the Developer's sole discretion;
- (b) At any general meeting the Developer will on a poll be entitled to such number of votes as is equal to all of the votes cast at the meeting by persons other than the Developer plus two (2) additional votes; and
- (c) The Executive Committee must be constituted in accordance with clause 25.

The Corporation

3. 6(a) insure the Development (which for this purpose includes each Strata Lot for the time being together with the Common Property and all erections, buildings and installations at any time standing or installed on or in it but excluding furniture, contents and personal effects in any Strata lot) and keep it insured against loss or damage by fire or riot, civil commotion, malicious damage, explosion, storm, hurricane, earthquake, flooding, impact, or damage caused by any of those risks and such other risks as the Executive Committee thinks fit with such insurance company of repute as it decides to an amount equal to the full replacement value thereof plus surveyors', architects' and lawyers fees; and"

1. 6(10) keep and retain minutes of its meetings

25. The members of the Executive Committee nominated in accordance with clause 2 of these bye-laws must be five (5) persons appointed in writing by the Developer, who will remain in office until such time as the Developer terminates their appointment or until the Annual General Meeting next after the provisions of clause 2 cease to have effect, whichever first occurs. If any member of the Executive Committee appointed by the Developer dies, resigns, or is removed before to the Annual general Meeting next after the provisions of clause 2 cease to have effect, the Developer may appoint a person in his place.

33. The Executive Committee must:-

(1) keep minutes of its meetings

(2) keep proper books of account in respect of all money which it receives and spends;

(3) prepare proper accounts relating to all the Corporation's money and its income and expenditure for each Annual General Meeting.

(6) open a bank account in the Corporation's name in such bank as it decides and deposit all the Corporation's money in it and ensure that all cheques drawn on any account of the Corporation are signed by two (2) members of the Executive Committee or by one member and either the Corporation's manager or Secretary unless and until the Executive Committee otherwise determines;

(7) without prejudice to the provisions of clause 32(1), use its best endeavours to employ on the Corporation's behalf a full time resident general manager in connection with the control, management, and administration of the Common property and the Strata Lots and the exercise and performance of the Corporation's powers and duties.

39. Audit

Once at least every year the accounts of the Corporation must be examined and the correctness of the income and expenditure account and balance sheet ascertained by a properly qualified auditor.

5. The Executive Committee is also under an implied duty to act honestly, reasonably and in good faith and in the best interests of the Corporation as a whole.
6. The Executive Committee of the Strata is chaired and run by Mr. Henry Bodden, who is also the owner of 7 units at the Strata.
7. The Defendant, through the Executive Committee, has failed to exercise its powers and duties in accordance with the by-laws and the Law and in accordance with its implied duties in the following respects:

(a) Failure to keep accounts

In breach of by-law 33(3) no proper accounts have been prepared for the AGM from on or before 2004 to 2010 with the exception that one set of draft unaudited financial statements were supplied for year end September 30th 2009.

(b) Failure to keep minutes of meeting

In breach of by-law 33(1) the defendant has failed to keep minutes of any meetings held. Despite repeated requests for the production of same by the Plaintiff no such minutes have been provided.

(c) Failure to keep proper books of account

In breach of by-law 33(2) the Defendant has failed to keep proper books of account. The defendant has further failed on request to make such books of account available to the plaintiff.

(d) Failure to employ full time resident general manager

In breach of by-law 33(7) the defendant has not sought to nor has it employed a full time resident general manager to control, manage and administer the common property and Strata lots. The Plaintiff has sought the appointment of same on numerous occasions and the defendant has refused or neglected to remedy its default and appoint such person.

(e) Failure to Audit books of account

In breach of by-law 39 the defendant has refused or neglected to have the correctness of the income and expenditure account and balance sheet determined by a qualified auditor.

(f) Failure to have 2 signatories on the defendant bank account

In breach of by-law 33(6) the defendant has failed to have 2 signatories on the defendant corporation bank account and Mr. Henry Bodden is the sole signatory.

(g) Failure to keep insurance in place.

The defendant allowed hurricane insurance to lapse for 42 days from September 2008 through October 2008 in breach of Section 6 of the Strata titles Registration Law (2005 Revision) and 6 (a) of by-laws.

(h) Inability to manage the Strata corporation

Particulars

- (1) The Plaintiff repeats paragraphs 6(a) through (f) as demonstrating the inability of the current Executive Committee to properly manage the defendant corporation.
- (2) Despite repeated requests for the Defendant to remedy the substantial breaches of the by-laws the Defendant has failed or refused to do so.
- (3) The affairs of the Strata are run in an unprofessional and haphazard manner and fall below the necessary level of competence required of a corporation of this scale and value and to safeguard the interests of the owners.
- (4) That the defendant, through its elected representative Mr. Henry Bodden has become engaged in dispute with various owners at the corporation, including the Plaintiff to the extent that it impedes and or prevents proper governance of the Strata.
- (5) Such disputes include allegation and counter allegation of physical assault between the chairman and an owner.
- (6) That the defendant through the actions of its representative, Mr. Henry Bodden has made it clear that there is no prospect of resolution of the conflict without the intervention of the Court and the appointment of an independent third party as administrator.
- (7) That the defendant has failed or refused to comply with reasonable requests for information and documentation in regards to the running of the Strata including but not limited to:
 - (i) Failing to take and provide on request minutes of meetings held including AGM's and EGM's.
 - (ii) Failing to provide financial statements on request.

(i) Failing to keep a receptacle for post on the property in accordance with Section 7 of the Law

Section 7 of the Law requires the defendant to keep 'at a conspicuous place at or near the front of the land to which the relevant strata plan relates, a receptacle for purposes of postal delivery, with the name of the corporation clearly shown thereon.' This receptacle has never been placed on the property.

(j) Failure to properly run Strata meetings in accordance with by-laws 10 and 11 and 14-22 in the following respects:

- (1) Failing to give 21 days notice with place and date of meeting along with notice of special business.
- (2) Failing to provide financial statements along with the said notice.
- (3) Failing to provide a detailed agenda 72 hours prior to meeting on the Common Property.
- (4) Failing to follow the order of business.
- (5) Failing to take minutes of the meetings
- (6) Failing to certify proxies

(k) Failure to act reasonably and avoid conflict of interest

Particulars

- (1) The chairman of Executive committee of the defendant corporation and therefore the day to day running of the Strata Corporation has been carried out by Mr. Henry Bodden from at least 1998 to the present day. Mr. Bodden is a resident of the U.S.A.
- (2) Mr. Bodden is also the current owner of 7 units out of a total number of 22 Units of the corporation. As such at any meeting he carries approximately 34% of the voting rights at the meeting.
- (3) It is alleged by the chairman that a motion or motions were passed to authorise payment to him to cover travel expenses to come to Grand Cayman once per month to tend to Strata business.
- (4) As the Defendant has failed or refused to provide minutes of meetings it is unknown (a) if the chairman absented himself from such vote (b) whether or not such motion was indeed passed (c) whether such motion was passed for one year only or indefinitely?
- (5) The actions and correspondence of the chairman display a pattern of behaviour which has undermined the Plaintiff's belief that the defendant corporation is being run in a professional and competent manner.

8. The Plaintiff's have sought and continue to seek that an independent management company, to be agreed by the parties, be appointed to run the Strata, the Defendant unreasonably refuses to accede to this request.
9. The defendant refuses to engage in any meaningful dialogue to remedy the numerous breaches of the by-laws, the Law and the fiduciary duties of the Executive Committee whether those breaches are minor or major in nature. The effect is that the Strata is being run in an unsatisfactory manner and it detrimentally affecting the owners as a whole and the value of the Strata Units.
10. The plaintiff believes that the appointment of an independent administrator for a period of time will achieve the following:
 - (a) Allow the by-laws to be amended where needed.
 - (b) Allow for practice and procedure in relation to accounts, auditing, meetings and any other matters currently in dispute to be resolved.

- (c) Allow for the current discontent and ill feeling within the Strata to dissipate.
- (d) It is believed that these objectives can be achieved at minimal extra cost to the Owners.

11. And the Plaintiff seeks the relief as sought.

Dated the ^{3rd} day of November 2010

Samson & McGrath

Samson and McGrath

Attorneys at Law for the Plaintiff

This Originating Motion was issued by Samson and McGrath, Attorneys at Law for the Plaintiff whose address for service is 5th Floor Genesis Building, George Town, Grand Cayman, PO Box 446 G.T.