

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: *Goode* OF 2016

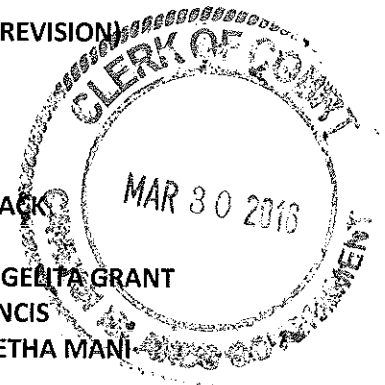
IN THE MATTER OF SECTION 9 OF THE STRATA TITLES REGISTRATION LAW (2013 REVISION)

AND IN THE MATTER OF THE PROPRIETORS, STRATA PLAN NO. 726

BETWEEN:



- 1) DEBORAH MITCHELL & HUGH GARY BLACK
- 2) PATRICIA MENDEZ
- 3) OMAR SHARIFF GRANT & KRISTINA ANGELITA GRANT
- 4) SHANNON E. FRANCIS & SHANE L. FRANCIS
- 5) MATTHEW JOHN MONEYSMAKER & GEETHA MANI ALAGIRISAMY



AND:

- 1) THE PROPRIETORS, STRATA PLAN NO. 726
- 2) MIRAGE DEVELOPMENT LTD



NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on *23rd May*
at *9:30 AM* or as soon thereafter as counsel can be heard, by counsel on behalf of the Plaintiffs
for the following relief:

1. That the Court appoints Tim Hepburn of BCQS Property Management Ltd an administrator to act in place of the Executive Committee of The Proprietors, Strata Plan No. 726.
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, Strata Plan No. 726 and/or Mirage Development Ltd.

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

1. The plaintiffs are the registered proprietors of Units No. 7,8,9,10 & 11 at Strata Plan No. 726 which is also known as "Snug Harbour Villas". The plaintiffs' names and addresses are as follows:
 - 1.1 Deborah Mitchell & Hugh Gary Black West Bay Beach South 12C 454H3
 - 1.2 Patricia Mendez West Bay Beach South 12C 454H4
 - 1.3 Omar Shariff Grant, Kristina Angelita Grant West Bay Beach South 12C454H5
 - 1.4 Shannon E. Francis & Shane L. Francis West Bay Beach South 12C 454H6
 - 1.5 Matthew John Moneymaker & Geetha Mani Alagirisamy West Bay Beach South 12C 454H7

2. The 1st defendant is a body corporate consisting of a collection of all the Strata Proprietors contained within Strata Plan No. 726 ("the Strata" or "1st defendant") in accordance with Section 5(1) of the Strata Titles Registration Law (2013 Revision) (hereinafter 'the Law').
3. The 2nd defendant was the first registered owner of each of the 24 Units at the Strata upon creation of the land parcels in 2010. The 2nd defendant is currently the owner of approximately 14 Units at the Strata, having sold approximately 10 units at the Strata to third parties.
4. On or about the 4th July 2013, the 2nd defendant as sole owner of all Units at the Strata at that time and acting through Mr. Lewis Ebanks as Director, unanimously resolved to amend the Strata bye-laws. Such amended bye-laws were duly filed at the Cayman Islands Department of Lands and Survey on the same date and remain in force.
5. The control, management and administration of the strata units and common property contained in the Strata plan and constituting the 1st defendant are regulated by by-laws in accordance with Section 21 of the Law.
6. The Executive Committee is a body constituted under the registered bye-laws of the 1st defendant and pursuant to bye-law 4;
'there shall be an Executive Committee of the Corporation which shall, subject to the provisions of Clause 2 of these Bye-laws and subject to any restrictions imposed or directions given at a General meeting, exercise the powers and perform the duties of the Corporation..'
7. The bye-laws of the 1st defendant set out, inter alia, the powers and duties of the 1st defendant and in particular state as follows:

"Developer" means Empire Development Company Limited its successors and assigns.

2. Commencement Conditions Precedent

Notwithstanding anything to the contrary contained in the by-laws, so long as the Developer remains a registered proprietor of any portion of the Development which is as yet to be developed, or for a period of 5 years from the date of registration of these by-laws, whichever shall occur first, a majority of the Executive Committee of the Strata Corporation shall be the Developer's nominees.

3. General Meetings

The Corporation shall in each year hold a General Meeting as its Annual General Meeting. Not more than 15 months shall elapse between the date of one AGM and the next.

3.3 Extraordinary General Meetings may be convened by a requisition in writing made by proprietors entitled to 25 % of the aggregate unit entitlement of the Strata Lots.

4. The Executive Committee

4.2.1 the Executive Committee shall consist of not less than 3 nor more than 7 proprietors; provided that where there are less than 3 proprietors the Executive Committee shall consist of all the proprietors.

4.3 the first members of the Executive Committee shall be appointed or nominated by the Developer and shall remain in office until such time as they wish to resign.

4.8 At meetings of the Executive Committee all matters shall be determined by a simple majority vote.

4.11 The Executive Committee shall

- keep minutes of meetings.
- Cause proper books of account to be kept in respect of all monies received.
- Prepare accounts relating to all moneys of the Corporation and income and expenditure for each AGM.
- On application of a proprietor make books of account available for inspection at all reasonable times.

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. From the filing of the bye-laws until at earliest November 2015, the Executive Committee of the Strata was made up of the 2nd defendant acting through its Director Lewis Ebanks.
7. The plaintiffs to this action were registered as owners of their Units on the following dates:

Unit 7	12C 454H3	5 November 2013 – Mitchell & Black
Unit 8	12C 454H4	12 December 2013 - Mendez
Unit 9	12C454H5	14 November 2013 - Grant
Unit 10	12C 454H6	22 August 2014 – Francis
Unit 11	12C 454H7	14 November 2013 – Moneymaker

8. The 1st 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 between July 2013 and November 2015. Further or in the alternative the 1st defendant, which is to act through its appointed Executive Committee has proved unable to manage the Strata and as a result an administrator requires to be appointed.

Particulars

(a) Failure to form a properly constituted Executive Committee

From the 2nd September 2013 when the first owner who was not the 2nd defendant purchased a Unit, the defendants failed to include the other owners on the Committee in accordance with by-law 4.2.1. As of November 2015 the 2nd defendant has indicated to the plaintiffs that from November 2015 there is no Executive Committee of the Strata at all.

(b) Failure to hold an AGM

The Executive Committee and the 2nd defendant have failed to convene an AGM since inception to date.

(c) Failure to keep books of account

In breach of by-law 4.11 no proper books of account have been kept with respect of all monies received nor have these been made available for inspection to the plaintiffs by the defendants.

(d) Failure to keep minutes of meetings

In breach of by-law 4.11 the Executive Committee of the 1st defendant has failed to keep minutes of any meetings held. Despite repeated requests for the production of same by the Plaintiffs no such minutes have been provided.

(e) Failure to prepare accounts

In breach of by-law 4.11 the Executive Committee of the 1st defendant has not prepared accounts relating to all moneys of the Strata and of the income and expenditure of the Strata for each AGM.

9. The breakdown of relations between Mr. Lewis Ebanks, acting as owner of the 2nd defendant and as sole member of the Executive Committee of the 1st defendant, and the plaintiffs as purchasers of Units within the Strata is such that the appointment of an administrator is necessary to bring order to the affairs of the strata.
10. As a result of the breaches by the 2nd defendant acting as Executive Committee of the 1st Defendant outlined in paragraph 8, owners at the Strata requisitioned an EGM of the Strata pursuant to their right under the bye-laws and this EGM was held on the 24th October 2015.
11. Despite the holding of an EGM, the defendants continued to refuse to comply with the bye-laws. As a result a number of owners determined to cease paying Strata fees to the defendants until such time as the defendants took the following steps:
 - (a) Opened a dedicated Strata bank account in the name of the Proprietors, Strata Plan No. 726 allowing for open and transparent dealings between the owners and the 2nd defendant and providing accountability for all monies had and received and paid.
 - (b) Provided properly vouched accounts for the Strata from November 2013 to present.
 - (c) Appointed of a professional management company to manage the Strata.
12. This ultimatum was relayed to the defendants on 22nd December 2015 and despite acknowledging receipt of the demand letter no steps to agree or compromise the position was taken by the defendants.
13. As a result of this impasse the following state of affairs now subsists within the Strata:
 - 13.1 By email dated 10th March 2015 the 2nd defendant stated in writing that as of November 2015 the 2nd defendant had ceased to act as caretaker of the strata affairs. Its position is that the Strata has thereafter been governed by clause 4.2.1. of the bye-laws with all owners forming the Executive Committee.
 - 13.2 It is denied that an Executive Committee consisting of all owners has been formed or is operating and as a result it is averred that the Strata has no management and no Executive

Committee. The 2nd defendant, being the only person with the ability to elect and appoint another Executive Committee, refuses to do so.

13.3 Owners of the 10 privately Units at the Strata commenced paying fees into a Trust account separate and apart from the defendants and utilising these fees as follows:

- (a) To pay insurance costs for their Units;
- (b) To pay some of the maintenance costs for the Strata;
- (c) To provide a residue to funds to be applied to the Strata upon resolution of this dispute for the management and administration of the Strata as necessary.

14. As a result, the 1st defendant is unable to manage its own affairs and the plaintiffs believe that the appointment of an independent administrator for a minimum period of one year will achieve the following:

- (a) Allow for practice and procedure in relation to accounts, meetings and any other matters currently in dispute to be resolved.
- (b) Allow for the current discontent and ill feeling within the Strata to dissipate.
- (c) Allow for the insurance for the Strata to be paid and for an Executive Committee to be appointed.
- (d) It is believed that these objectives can be achieved at minimal extra cost to the Owners.

15. And the Plaintiff seeks the relief as sought.

Dated the ^{30th} day of March 2016

Samson & McGrath

Samson and McGrath

Attorneys at Law for the Plaintiff

TO: The Clerk of the Court

AND TO: The Proprietors, Strata Plan No. 726
P.O.Box 10009, Grand Cayman KY1-1001
Mirage Development Ltd
P.O.Box 10009, Grand Cayman KY1-1001