

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 19 OF 2007

In the Matter of the Strata Titles Registration Law (2005 Revision) (“Law”)

And in the Matter of Strata Plan No. 6 (“Strata Plan”)

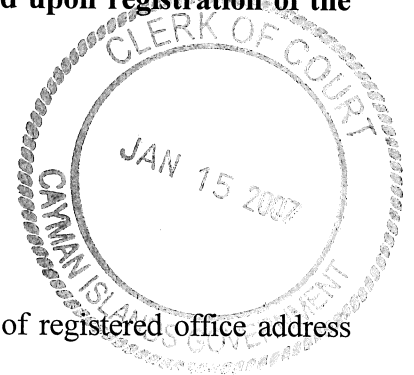
And in the Matter of an application made pursuant to Section 23(6) of the Law for the winding-up of the affairs of the strata corporation that was created upon registration of the Strata Plan



PETITION

To the Grand Court

The Humble Petition of Botany Bay Holdings Ltd. (“the Petitioner”) of registered office address Butterfield House, 68 Fort Street, George Town, Grand Cayman, shows that:-



1. Strata Plan No 6, also known as The Cayman Reef Club, was registered on 17th February 1976 whereupon the proprietors of all the strata lots contained in the Strata Plan became a body corporate (hereafter “the Strata Corporation”).
2. The Petitioner is and was at all material times the owner of units 3 (parcel 44B-7H3) and 4 (parcel 44B-7H4) created on registration of the Strata Plan. The Strata Plan comprises eight units in total. The units vary in size and for the purpose of the Strata Corporation’s by-laws each unit has a certain unit entitlement. The proprietors, unit entitlements and chargees of the units are as follows:

Unit & Unit Entitlement	Registered Proprietor	Chargee
Unit 1 (15)	Quick Silver Ventures Limited	Joel Scott
Unit 2 (10)	Lisa Turner	Bank of Butterfield International (Cayman) Limited
Unit 3 (10)	Botany Bay Holdings Limited	-----
Unit 4 (15)	Botany Bay Holdings Limited	Bank of Butterfield International (Cayman) Limited
Unit 5 (15)	Allan & Linda Armstrong	-----
Unit 6 (10)	Allan & Linda Armstrong	-----
Unit 7 (10)	Julia Moran Morton	First Caribbean International Bank (Cayman) Limited
Unit 8 (15)	Liane Veroninkaitis	-----

3. In or about September 2004 the building shown in the Strata Plan and formerly situate on Cayman Islands registered parcel 44B-7 ("the Building") sustained severe damage as a result of Hurricane Ivan.
4. In or about January 2005 the sum of CI\$722,586 representing the proceeds of the insurance policy held by the Strata Corporation in September 2004 was paid to the credit of a bank account held by the Strata Corporation at Cayman National Bank Ltd. ("CNB").
5. In or about March 2005 on the instructions of the Strata Corporation what remained of the Building was demolished with the result that there is no longer a building on parcel 44B-7.

6. During 2005 the Strata Corporation engaged a firm of architects, Archimetrics Inc, to prepare plans and assist in applications necessary to replace the Building.
7. As a result of rising costs and the need to comply with planning and building regulations the insurance proceeds are insufficient to meet the cost of replacing the Building.
8. Meetings of the Strata Corporation took place in 2005 and 2006. At the meeting of the Strata Corporation held in Fort Myers Florida on 27th May 2006 the proprietors failed to reach agreement as to how to proceed in view of the shortfall in the funds available to replace the Building. The owners of units 2, 5, 6 and 7 representing 45% of the total unit entitlements in the Strata Corporation and the owners of units 1, 3, 4 and 8 representing the remaining 55% of those total unit entitlements took opposing positions. The owners of units 2, 5, 6 and 7 generally vote together as one voting block, as do the owners of units 1, 3, 4 and 8. Hereafter the owners of units 1, 3, 4 and 8 will be referred to collectively as "the Supporting Proprietors" and the owners of units 2, 5, 6 and 7 collectively as "the Opposing Proprietors".
9. In July 2006 the Petitioner paid to the Strata Corporation the sum of \$3,750 in respect of the Strata Corporation's contribution assessment on the understanding that all proprietors would pay the sum due in respect of their units. In the event, the Petitioner was the only proprietor to pay such assessment and (to avoid unjust enrichment of the Strata Corporation at the expense of the Petitioner) the Petitioner seeks reimbursement of the same.

10. At the beginning of November 2006 the Petitioner requisitioned an Extraordinary General Meeting of the Strata Corporation proprietors pursuant to the Strata Corporation's by-laws to obtain a unanimous resolution of all proprietors that the Building has been destroyed for the purposes of section 23 of the Law. Though there can be no doubt that the Building has been destroyed the Opposing Proprietors opposed the proposed resolution (without proposing any amendments thereto) thereby frustrating the Petitioner's efforts to deal with the situation without reference to this Honourable Court.

11. In view of the division between the Supporting Proprietors and the Opposing Proprietors and the tensions and distrust which now exist between them it seems unlikely that a Court ordered declaration that the Building has been destroyed (pursuant to s 23 (2) (b) of the Law) would resolve all issues. Accordingly, rather than facing the risk of having frustrated proprietors in common seek the Registrar to order sale of parcel 44B-7 pursuant to section 103 of the Registered Land Law (2004 Revision) with potential for dispute as to the appropriate price, manner of sale, accounting and division of the proceeds, the Petitioner asks that a liquidator be empowered to sell parcel 44B-7 and take all steps necessary to bring the affairs of the Strata Corporation to an end under the direction of this Honourable Court.

AND YOUR PETITIONER THEREFORE HUMBL Y P R A Y S as follows:

- (1.) That the Strata Corporation be wound up by the Court pursuant to s 23 (6) of the Law.

- (2.) Should the Court make an Order winding up the Strata Corporation, that Lawrence Edwards of the accounting firm of PricewaterhouseCoopers Cayman Islands be appointed and

empowered as liquidator ("the Liquidator") of the Strata Corporation without the need for giving security for performance of his duties as the Liquidator.

- (3.) That upon appointment of the Liquidator, the powers of the Executive Committee of the Strata Corporation and/or of the proprietors of the Strata lots in connection with the management of the Strata Corporation shall cease.
- (4.) That the Liquidator be authorised to do such things considered by him to be necessary or desirable in connection with the liquidation of the strata Corporation and the winding up of its affairs.
- (5.) That the Liquidator be authorised to do all acts and execute all documents in the name and on behalf of the Strata Corporation.
- (6.) That the Liquidator and his staff be remunerated out of the assets of the Strata Corporation at his customary rates, such fees and expenses to be approved by the Court.
- (7.) That the Liquidator may engage the services of such attorney-at-law or other professional expert or adviser as he deems necessary for the purposes of properly carrying out his duties as the Liquidator and may disburse the Strata Corporation's funds to pay for such services.
- (8.) That the costs incurred by the Strata Corporation during the period of the liquidation including Liquidator's fees and disbursements be paid from funds in the Strata Corporation's bank accounts at CNB on which the Liquidator shall forthwith be the sole signatory in place of any and all other signatories.

- (9.) That the Liquidator do forthwith reimburse the Petitioner on a full indemnity basis from the funds in the Strata Corporation's said bank accounts the costs of preparing (including taking instructions and all necessary factual and legal research and work leading up to preparation), filing advertising, serving and presenting the Petition herein.
- (10.) That the Liquidator do forthwith refund the sum of US\$3,750.00 to the Petitioner respecting the latest contribution assessment paid by the Petitioner to the Strata Corporation.
- (11.) That the correctness of the Strata Corporation's income and expenditure accounts and balance be examined and ascertained by the Liquidator prior to making final disbursement to relevant proprietors, chargees and third parties.
- (12.) That the Liquidator be authorised to obtain from the Strata Corporation and each such person who served (or purported to serve) at any time and from time to time as a member of the Executive Committee such information as the Liquidator reasonably considers necessary in order that he is properly able to discharge his functions and as an Officer of the Court.
- (13.) That the Liquidator place an advertisement in the *Caymanian Compass* requiring any and all third party claims against the Strata Corporation to be submitted in writing with supporting details to the Liquidator no later than seven days from the date of such advertisement.
- (14.) That after ascertaining the correctness of the Strata Corporation's income and expenditure accounts and balance and after the time for the Liquidator's receipt of written

claims from third parties has passed, the Liquidator determine and pay the proper amount owed (if any) by the Strata Corporation to Archimetrics Inc. and to any other third party.

- (15.) That the Liquidator ascertain the amount owed by each proprietor to each chargee and the basis on which additional charges shall accrue up to and including the date of final payment to each relevant chargee; provided any deficiency in paying what is owed by any relevant proprietor to any relevant chargee shall be the responsibility of such proprietor and not the responsibility of the Liquidator.
- (16.) That the Liquidator obtain a suitable valuation of parcel 44B-7 as cleared and undeveloped land from JEC Property Consultants or such other local professional valuer as the Liquidator thinks fit.
- (17.) That the Liquidator advertise the intended sale of parcel 44B-7 as cleared and undeveloped land in such manner as the Liquidator deems necessary.
- (18.) Subject to (20) below, that the Liquidator have full and unfettered power to sell parcel 44B-7 on behalf of the Strata Corporation as cleared and undeveloped land and may in his discretion effect such sale either by private treaty or by public auction.
- (19.) That any one or more proprietors of the Strata Corporation or anyone connected therewith may bid or otherwise seek to purchase parcel 44B-7 and the Liquidator may effect such sale upon obtaining in his discretion either (1) approval in writing from or on behalf of all registered proprietors or (2) the approval of this Honourable Court.
- (20.) That upon registration of transfer of parcel 44B-7 by the Liquidator on behalf of the Strata Corporation to a purchaser, the Registrar of Lands enter on the Strata Plan a notification of

the cancellation of the Strata Plan and shall indicate by appropriate charting that it has been cancelled.

- (21.) That the unit entitlements established in the Strata Plan be recognised as being 10 unit entitlements for units 2, 3, 6 and 7 respectively and 15 unit entitlements for units 1, 4, 5 and 8 respectively.
- (22.) That after parcel 44B-7 has been sold and the proper amount owed by the Strata Corporation to Archimetrics Inc. and to any other third party has been paid and the sum US\$3,750.00 has been refunded to the Petitioner, the Liquidator prepare a schedule (“Schedule”) for disbursement along the lines of the format attached hereto and marked “Appendix A”.
- (23.) That the Liquidator distribute the Schedule to each relevant proprietor and chargee and file the Schedule with this Honourable Court and with the Registrar of Lands.
- (24.) That at any time prior to the date of dissolution of the Strata Corporation, there be liberty to apply to this Honourable Court by the Liquidator or by any other interested party (including a proprietor, a chargee or any other creditor).
- (25.) That provided the Liquidator is satisfied that funds are available for such purpose, the Liquidator may make one interim payment and/or a final payment to each relevant chargee.
- (26.) That where there is a chargee shown in the incumbrances section of the relevant land register respecting a strata lot as of the date of this Order, the Liquidator be authorised to effect disbursement in his discretion either (i) to that chargee on behalf of both the relevant proprietor and the relevant chargee or (ii) to the relevant proprietor and chargee jointly.

- (27.) That the Liquidator shall effect final disbursement to each relevant chargee and proprietor (in accordance with the Schedule and with the immediately preceding paragraph) on the business day ("Disbursement Date") that falls immediately after thirty days from the date on which the Schedule has been duly distributed to each relevant chargee and proprietor.
- (28.) That the Strata Corporation shall be dissolved on and from the thirtieth day ("Dissolution Date") after the Disbursement Date.
- (29.) That the Liquidator promptly publish in the *Cayman Islands Gazette* a notice that the Strata Corporation has been dissolved on and from the Dissolution Date, and the Liquidator also file with this Honourable Court a final accounting and report of his liquidation of the Strata Corporation.
- (30.) That the Liquidator be authorised to retain his records and the books and records of the Strata Corporation for a period of six years following the Dissolution Date.
- (31.) That upon such notice duly appearing in the *Cayman Islands Gazette* and upon the Liquidator duly filing such final accounting and report with this Honourable Court:
- a. The Liquidator (without more) be fully and absolutely released and discharged from any and all the duties, obligations and/or liabilities as a result of the appointment under paragraph (2) above.
 - b. Each relevant proprietor (without more) be fully and absolutely discharged from any and all of his, her or its obligations and/or liabilities as a proprietor of the Strata Plan;
and

c. Each person who served (or who purported to serve) at any time and from time to time as a member of the Executive Committee be fully and absolutely discharged from any and all of his or her obligations and/or liabilities as a member of the Executive Committee and/or as an officer and/or agent of the Strata Corporation and/or of the Executive Committee.

(32.) Costs.

(33.) Such further or other order as to this Honourable Court shall seem fit.

Dated the 15th day of January 2007.


Truman Bodden & Company
Attorneys-at-Law

NOTE: This petition is intended to be served on the following at these addresses appearing in the respective land register as follows:

Cayman National Bank Ltd., P.O. Box 1097, George Town, Grand Cayman KY1-1102, Cayman Islands

Quick Silver Ventures Ltd., c/o P.O. Box 1166, George Town, Grand Cayman KY1-1102, Cayman Islands

Joel Scott, George Town, Grand Cayman

Lisa Turner, P.O. Box 30653 SMB, Grand Cayman KY1-1203, Cayman Islands

Bank of Butterfield International (Cayman) Ltd., P.O. Box 705, George Town, Grand Cayman KY1-1107, Cayman Islands

Allan Gordon Armstrong and Lynda Lu Armstrong, 4134 Poplar St., San Diego, CA 92105, USA

Julia Moran Morton, Grand Cayman, Cayman Islands

FirstCaribbean International Bank (Cayman) Limited, P.O. Box 68, George Town, Grand Cayman KY1-1102, Cayman Islands

Liane Voroninkaitis, P.O. Box 1511, George Town, Grand Cayman KY1-1110, Cayman Islands

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APPENDIX “A”

Schedule for Disbursement of Funds