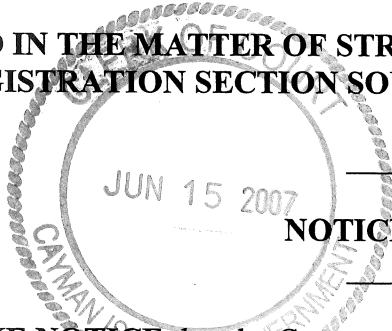


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>0257</sup> OF 2007

IN THE MATTER OF THE REGISTERED LAND LAW (2004 REVISION)

AND IN THE MATTER OF STRATA PLAN 368, CARIBBEAN COURT,  
REGISTRATION SECTION SOUTH SOUND BLOCK 7C PARCEL NO. 8REM1



NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on the \_\_\_\_\_ of \_\_\_\_\_ 2007 at \_\_\_\_\_ am/pm or as soon thereafter as counsel can be heard, by counsel on behalf of counsel on behalf of the Proprietors of Strata Plan 368 (the "Corporation") for:

1. An order directing the Registrar of Lands to strike the amendments to Strata Plan No. 368, Registration Section South Sound Block 7C Parcel No. 8REM1 ("the Strata Plan") registered on or about the 29<sup>th</sup> of July 2005;
2. An order directing that the Registrar of Land return the Strata Plan to its state as registered on or about 15<sup>th</sup> of April 2003;
3. An order directing the Registrar of Lands to strike the amendments made to the land described as Registration Section South Sound, Block and Parcel No. 7C 8REM1H30 on or about July 2005 and for the Register to be returned to its state as previously registered. That the Registrar be accordingly directed to amend and rectify the Land Registry as it relates to the land described as Registration Section South Sound, Block and Parcel No. 7C 8REM1H31 by:
  - (i) Deleting the Approximate area of 1805 square feet;
  - (ii) Inserting the Approximate area of 1280 square feet;
  - (iii) Deleting the area square footage of 1805 square feet and the unit entitlement of 146 on page 2C of Phase 2-Caribbean Court Strata Plan 368 registered 29 July 2005;
  - (iv) Inserting the area square footage of 1280 square feet and the unit entitlement of 127 on page 2C of Phase2-Caribbean Court Strata Plan 368.

4. An order directing the Registrar of Lands to strike the amendments made to the land described as Registration Section South Sound, Block and Parcel No. 7C 8REM1H31 on or about July 2005 and for the Register to be returned to its state as previously registered. An order directing the Registrar of Lands to amend and rectify the Land Registry as it relates to the land described as Registration Section South Sound, Block and Parcel No. 7C 8REM1H31 by:
  - (i) Deleting the Approximate area of 1815 square feet;
  - (ii) Inserting the Approximate area of 1280 square feet;
  - (iii) Deleting the area square footage of 1815 square feet and the unit entitlement of 146 on page 2C of Phase 2-Caribbean Court Strata Plan 368 registered 29 July 2005;
  - (iv) Inserting the area square footage of 1280 square feet and the unit entitlement of 127 on page 2C of Phase2-Caribbean Court Strata Plan 368.
  
5. An order directing the Registrar of Lands to strike the amendments made to the land described as Registration Section South Sound, Block and Parcel No. 7C 8REM1H32 on or about July 2005 and for the Register to be returned to its state as previously registered. An order directing the Registrar of Lands to amend and rectify the Land Registry as it relates to the land described as Registration Section South Sound, Block and Parcel No. 7C 8REM1H32 by:
  - (i) Deleting the Approximate area of 1805 square feet;
  - (ii) Inserting the Approximate area of 1280 square feet;
  - (iii) Deleting the area square footage of 1805 square feet and the unit entitlement of 146 on page 2C of Phase 2-Caribbean Court Strata Plan 368 registered 29 July 2005;
  - (iv) Inserting the area square footage of 1280 square feet and the unit entitlement of 127 on page 2C of Phase2-Caribbean Court Strata Plan 368.
  
6. An order directing the Registrar of Lands to strike the amendments made to the land described as Registration Section South Sound, Block and Parcel No. 7C 8REM1H33 on or about July 2005 and for the Register to be returned to its state as previously registered. An order directing the Registrar of Lands to amend and rectify the Land Registry as it relates to the land described as Registration Section South Sound, Block and Parcel No. 7C 8REM1H33 by:
  - (i) Deleting the Approximate area of 1815 square feet;

- (ii) Inserting the Approximate area of 1280 square feet;
  - (iii) Deleting the area square footage of 1815 square feet and the unit entitlement of 146 on page 2C of Phase 2-Caribbean Court Strata Plan 368 registered 29 July 2005;
  - (iv) Inserting the area square footage of 1280 square feet and the unit entitlement of 127 on page 2C of Phase2-Caribbean Court Strata Plan 368.
7. Such further or other relief as may be deemed just and necessary by this Honourable Court.
  8. An order that the costs of and incidental to the appeal be provided for.

**AND FURTHER TAKE NOTICE** that the grounds of this appeal are:

1. The amendments to the Strata Plan registered on or about July 29<sup>th</sup> 2005 and the corresponding amendments made to parcels 8REM1H30 – 8REM1H33 to increase their respective square footage and unit entitlements were contrary to the law and should not have been so registered. The Corporation relies upon the following facts and matters:
2. On or about March 14<sup>th</sup> 2003 a Phase Strata Plan was registered with the Land Registry which registered units 7C 8REM1 H1-H29 and provided for the future development of 4 further Strata Lots.
3. On or about April 15<sup>th</sup> 2003 in accordance with the Phase Strata Plan filed on March 14<sup>th</sup> 2003 a further Phase Strata Plan was registered with the Land Registry, which registered the 4 further strata lots (the “Strata Lots”). The Strata Lots were registered as units 7C 8REM1 H30 – H33. No further phases of development were identified and the Strata Lots were registered with the following square footage and unit entitlement:

Unit 7C 8REM1 H30	1,280 Square Feet	127 Unit Entitlement
Unit 7C 8REM1 H31	1,280 Square Feet	127 Unit Entitlement
Unit 7C 8REM1 H32	1,280 Square Feet	127 Unit Entitlement
Unit 7C 8REM1 H33	1,280 Square Feet	127 Unit Entitlement

4. On or about December 2004 the owners and/or agents of the Strata Lot owners began constructing balconies and patios on the common property of the Strata Plan.
5. On or about April 28<sup>th</sup> 2005, prior to the completion of the balconies and patios, the Corporation’s attorneys sent a letter before action stating that the balconies and patios were being constructed on common property without unanimous resolutions and

accordingly constituted a trespass and/or breach of strata bylaws. The letter demanded the immediate cessation of construction on the common property.

6. On or about May 2005 the owners and/or agents of the Strata Lots applied to the Registrar of Lands (the "Registrar") to amend the Strata Lots to include the balconies and patios. The applications were brought without the authority or consent of the Corporation and without notice to the Corporation.
7. On or about July 21<sup>st</sup> 2005 the Corporation commenced proceedings for the removal of the balconies and patios (the "Grand Court Proceedings").
8. On or about July 29<sup>th</sup> 2005 the Registrar registered a new Phase Strata Plan (the "New Phase Strata Plan") which stated the unit entitlement and square footage of the Strata Lots as follows:

Unit 7C 8REM1 H30	1,805 Square Feet	146 Unit Entitlement
Unit 7C 8REM1 H31	1,815 Square Feet	146 Unit Entitlement
Unit 7C 8REM1 H32	1,805 Square Feet	146 Unit Entitlement
Unit 7C 8REM1 H33	1,815 Square Feet	146 Unit Entitlement

9. The Registrar in or about the same time made corresponding amendments to Strata Lots to record them with the square footage and unit entitlements as contained in the New Phase Strata Plan.
10. The registration of the New Phase Strata Plan and amendments to the Strata Lots was contrary to the law in that:
  - 10.1 The New Phase Strata Plan and the corresponding amendments to the Strata Lots were contrary to the Strata Titles Registration Law (1996 Revision) s. 13 and s. 14 as they purport to transfer the common property of the Corporation to the Strata Lots. The said amendments were improper as:
    - 10.1.1 Contrary to s. 14(1) the proprietors of the Strata Plan had not by unanimous resolution directed the Corporation to transfer the common property or any part thereof;
    - 10.1.2 Contrary to s. 14(2) the Corporation did not execute the appropriate transfer;
    - 10.1.3 Contrary to s. 14(3) no certificate under the seal of the Corporation had been endorsed on any purported transfer.
  - 10.2 The New Phase Strata Plan was not in accordance with the law as both phases of the Strata Plan had previously been filed on the 14<sup>th</sup> of March 2003 and 15<sup>th</sup> of

April 2003. Accordingly as of the 15<sup>th</sup> of April 2003 the Strata Plan had been completed and so registered. Pursuant to the Strata Titles Registration Law (1996 Revision) in order for a further New Phase Strata Plan to be filed, a proposed strata lot development plan would have had to been filed showing the future development strata lot. This did not occur and the only documents previously registered was the Phase Strata Plan filed on April 15<sup>th</sup> 2003 which depicted the Strata as fully constructed and provided for no further development.

- 10.3 Further or alternatively, the New Phase Strata Plan was contrary to s. 18 of the Strata Title Registration Law 1996 Revision) as it was not in accordance with the proposed strata lot development plan which had been previously registered. Pursuant to s. 18 (2) when a proposed strata lot development plan has been filed the proposed strata development shall not be further altered in any way unless in accordance with that section. Contrary to s. 18 (2) no further strata lot development plan depicting the changes in the New Phase Strata Plan had been registered incorporating the proposed changes. Further or alternatively, contrary to s. 18(3) the unanimous consent of every proprietor of the Strata Plan had not been obtained with respect to the amendments depicted in the New Phase Strata Plan.
- 10.4 Further or alternatively, the New Phase Strata Plan was registered without the required authority, consent, or knowledge of the Corporation and contrary to the law in that the Application to amend the Strata Lots was brought by the owners of the Strata Lots alone. Pursuant to the Strata Title Registration Law (1996 Revision) only the proprietor of the land may apply to register or amend a Strata Plan. The proprietor of the common property was the Corporation and no application was brought by it, or on its behalf, to alter or amend the Strata Plan.
11. The Corporation was not given notice of, nor any opportunity to make representations with respect to, the application by the Strata Lots owners nor the actions of the Registrar in carrying out the registrations that effectively transferred the Corporation's common property to the Strata Lot owners.
12. The Registrar in registering the amendments acted in error having failed to appreciate that the application was not in accordance with the relevant laws as stated in paragraph 9 above. Further the Registrar in error failed to appreciate the amendments were not in accordance with the proposed strata lot development plan and that the appropriate consents of the proprietors of the Strata Plan and of the Corporation had not been obtained.
13. Upon learning of the registration of the New Phase Strata Plan the representatives of the Corporation wrote the Registrar in August 2005 and September 2005 explaining the error with respect to the registration and requesting a meeting with the Registrar to resolve the matter.

14. The Registrar subsequently accepted further letters from the parties with respect to the issue and met with the parties in an effort to resolve the matter.
15. In December 2005 the Corporation learned that a purported resolution of the Corporation dated the 30<sup>th</sup> of May 2003 had been provided to the Registrar in the first week of December 2005. The resolution provided for the construction of balconies pursuant to plans that were stated to be attached. The purported resolution was of no, or should have been of no, impact with respect to this matter as:
  - 15.1 Despite the reference to an attached draft plan to the resolution, no phase strata plan depicting the balconies as constructed was produced or filed until subsequent to the construction. There is accordingly no evidence that the resolution authorized the construction of the balconies as they were built.
  - 15.2 At the time the purported resolution was alleged to have been passed there was a Stay of Registration filed with respect to a strata lot which was under contract to be purchased and there is no evidence that the required consent of the contracting purchaser was obtained;
  - 15.3 The purported resolution was not present in the Land Registry until subsequent to the amendments being registered in July 2005 and accordingly could not have properly been considered at the time of the registrations being appealed;
  - 15.4 The original of the purported resolution has not been produced despite requests for it and no record of the purported resolution existed within the records of the Corporation until subsequent to this dispute arising. Accordingly, the validity of the document and the date of its creation have not been established.
16. On or about the 6<sup>th</sup> of April 2006 the representatives of the Corporation met with the Registrar and subsequently sent a letter to the Registrar confirming their understanding from that meeting that the Registrar would reverse the amendments made in July 2005.
17. Subsequent to a further meeting, on or about the 13<sup>th</sup> of April 2006 the Registrar wrote the parties stating that she would be meeting with legal counsel to take advice with respect to the matter.
18. On the 1<sup>st</sup> of May 2006 the Registrar orally informed the representatives of the Corporation that she would not rectify the Register without a Court order. Following requests for a formal decision, on June 10<sup>th</sup> 2006, the Registrar wrote the parties stating that she did not have the power to rectify the registers pursuant to s. 139 of the Registered Land Law (2004 Revision). The Registrar stated, however, that she was aware of the Grand Court Proceedings and that all the issues arising from the Corporation's application before her would be fully ventilated in the Grand Court Proceedings and she

would be bound by any order made by the Court. The Registrar accordingly referred the issues surrounding the legalities of the July 2005 Registrations to the Grand Court.

19. In reliance on the Registrar's reference to the Grand Court Proceedings as being the appropriate forum for the resolution of the dispute, the Plaintiff subsequently sought to amend its pleadings to include, *inter alia*, the relevant facts and matters pertaining to the unlawful registrations in July 2005.
20. On June 5 2007 the Grand Court in response to an application to amend the Grand Court Proceedings to include the facts and matters pertaining to the unlawful registration directed the Plaintiff to file the present proceedings.
21. The Corporation's losses in this matter are ongoing as it remains without the common property taken from it. Further, despite the fact that each Strata Lot's square footage was increased by approximately 40% the unit entitlement of each of the Strata Lots was only increased by approximately 15%. Accordingly, should the unit entitlements be permitted to remain as presently recorded the Corporation will continue to suffer loss as a result of the incorrect unit entitlements. The Corporation from the inception of this matter has continually made efforts to ensure that all interested parties were aware of its challenge to the registrations.
22. Insofar as the registrations that took place on July 2005 can be regarded as a decision, direction, order, determination, or award (collectively referred to hereafter as "decision") of the Registrar, the Corporation seeks to appeal that decision pursuant to s. 147 of the Registered Land Law (2004 Revision). The grounds for appeal are as outlined above and include the fact that the Corporation was not given notice of or given any opportunity to make any representations to the Registrar with respect to the registrations which transferred the Corporation's common property to the Strata Lot owners. The Registrar had she been aware of all of the relevant facts and matters as outlined above could not have registered the amendments as requested by the Strata Lot owners. In the circumstances, the Corporation seeks an order in the terms stated above or as deemed just by this Honourable Court.
23. Provided the registrations that took place on July 2005 do fall within s. 147 of the Registered Land Law (2004 Revision) then the Corporation seeks an extension of time to bring the appeal. The Corporation refers to the corresponding application and Affidavit filed herewith.
24. Alternatively, the Registrar by virtue of her letter of the 10<sup>th</sup> of June 2006 having declined to make a decision with respect to this matter and having referred the matters in dispute to the Grand Court, the Corporation seeks an order to bring the matter formally before the Court. Accordingly the Corporation seeks an order directing the Registrar of Lands to state a case for determination by the Court to s. 146 of the Registered Land Law (2004 Revision). The case for determination being whether the Registrar in registering

the July 2005 amendments acted in accordance with the Strata Titles Registration Law (1996 Revision).

Dated the 14<sup>th</sup> day of June 2007

*Broadhurst Barristers*

**Broadhurst Barristers**

Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court

AND TO: The Registrar of Lands

AND TO: Pedro Theye & Suzanne Stewart  
PO Box 2281 GT  
George Town Grand Cayman

AND TO: German Escobedo  
PO Box 32201SMB  
George Town Grand Cayman

AND TO: Patrick Murphy  
PO Box 10335APO  
George Town Grand Cayman

AND TO: Scott Perkins  
c/o Appleby Spurling Hunter  
Clifton House  
George Town Grand Cayman

AND TO: Telos Holdings Ltd.  
PO Box 10335APO  
George Town Grand Cayman