

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2014/0070

BETWEEN:

[1] UNIT 301 SOUTH POINT LIMITED
[2] UNIT 302 SOUTH POINT LIMITED
[3] UNIT 303 SOUTH POINT LIMITED
[4] UNIT 304 SOUTH POINT LIMITED
[5] UNIT 305 SOUTH POINT LIMITED
[6] PETER DAVID SEGAL
[7] WENDY MAX
[8] LYNN CLAPP

Claimants

and

THE PROPRIETORS, CONDOMINIUM PLAN #C200800028
ROLS LIMITED

Defendants

Appearances:

Ms. E. Ann Henry QC and Ms. C. Debra Burnette for the Claimants
Mr. A. Astaphan SC, Mrs. Fidela Corban Lincoln, Mr. Kwame Simon
for the Defendants

2014: April 14
April 24

RULING

[1] **Cottle, J.:** Section 13, subsections (1) and (2), of the Registration of Condominium Titles Act Cap 376 of the Laws of Antigua and Barbuda provides:-

“13. (1) The corporation or any person having an interest in a condominium lot may apply to the court for appointment of an administrator.

(2) The court may in its discretion on cause shown appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or other as it thinks fit. The remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Act.”

[2] The Claimants are all registered proprietors in a condominium development in Antigua. The Second Defendants are the developers of the condominium plan and continue to own the majority of units in the development. At present, the affairs of the condominium corporation are being administered by an Executive Committee comprised of five (5) members. Two (2) members are representatives of the claimants and two (2) represent the Second Defendants. The fifth member of the Executive Committee represents an independent unit owner.

[3] Differences have arisen between the parties and the claimants have instituted the present claim. In the claim the Claimants seek the following relief:-

- (1) The appointment of an Administrator pursuant to Section 13 of the Registration of Condominium Titles Act, Cap. 376 to conduct and carry on the duties and powers of the First Named Defendant pursuant to the Registration of Condominium Titles Act, Cap. 376 and the By-laws of the Defendant.
- (2) An injunction to restrain the First named Defendant acting through its Executive Committee from holding the meeting requisitioned by the Requisitionists in letter dated the 23rd November, 2013 save insofar as the meeting shall:
 - i. receive and approve the accounts of the Corporation for the fiscal year ended 31st March, 2013;
 - ii. approve the re-appointment of Grant Thornton as auditors for the Corporation;
 - iii. receive and approve the Executive Committee's estimate of the common expenses and capital contributions required for full year ending 31st March, 2014 and also for the full year ending 31st March, 2015 until further Order of the Court.
- (3) An interim order appointing David Watt FCCA of P.O. Box 1318, American Road, St. John's in Antigua and Barbuda as Administrator pursuant to Section 13 of the Registration of Condominium Titles Act, Cap. 376 to conduct and to carry on the duties and powers of the Executive Committee of the First named Defendant pursuant to the Registration of

Condominium Titles Act, cap. 376 and the Bylaws of the First named Defendant until further Order of the Court.

- (4) Such further or other relief as to the Court may seem just.
- (5) That the costs occasioned by these proceedings may be provided for.

[4] At the same time, the Claimants filed an application seeking substantially the same relief. By consent, the parties agreed that no Annual General Meeting of the Condominium Corporation could be held pending the determination of the question of the appointment of the Administrator. This is the consideration of that application to appoint an Administrator.

[5] This is an area of law which does not appear to have been previously litigated before our courts. The grounds upon which the claimants base the application are set out. They are five in number. I reproduce them verbatim:-

- (1) By virtue of the Registration of Condominium Titles Act and the Bylaws of the Defendant, the Claimants as Unit owners of Condominiums recorded on the Condominium Plan #C200800028 are all members of the First named Defendant.
- (2) The management of the affairs of the First named Defendant are presently run by an Executive Committee comprised of five persons who fairly represent all of the Unit owners of Condominiums recorded on the Condominium Plan #C200800028.
- (3) By a requisition made in November, 2013, the Second named Defendant together with other Unit owners who together enjoy a majority of the members of the First named Defendant have required the calling of a meeting for the purposes, inter alia, of reducing the number of members constituting the Executive Committee from five to three.
- (4) The object of the reduction is to facilitate the taking of control of the First named Defendant by the Second named Defendant which action will prejudice the rights of the Claimants/Applicants under the Registration of Condominium Titles Act and the Bylaws and other agreements made between the Claimants/Applicants and the Second named Defendant as Declarant and the First named Defendant.
- (5) It is appropriate, given the circumstances, that the relief sought be granted.

- [6] On the morning of the hearing, counsel for the defendants indicated that the proposal to reduce the number of the Executive Committee from five (5) to three (3) would no longer be proceeded with. Counsel for the applicants was nonetheless content to continue with the application.
- [7] Under section 13 of the Act, the court has a discretion to appoint an Administrator once cause is shown. Counsel for the claimants cited Canadian authorities, applying similar legislation, to suggest to this court the way in which the discretion should properly be exercised.
- [8] In **Cook v Strata Plan N-50** 1995 2248 (BC SC) Huddart J. thought that “demonstrated inability to manage is sufficient cause for the appointment of an Administrator”. In **Lum v Strata Plan** VR 519 [2001] BC.J NO 641, Harvey J set out some factors to be considered when the court is exercising its jurisdiction to appoint an Administrator to a Condominium Corporation. These include:-
- a) whether there has been established a demonstrated inability to manage the strata corporation;
 - b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation;
 - c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation;
 - d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation;
 - e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.
- [9] In the case under consideration the Claimants complain of a conflict of interest. They say the Second Defendants cannot fairly manage the affairs of the Condominium Corporation because they continue to own the majority of the units and are also operating a hotel properly on adjacent land. This commercial enterprise they operate for their own benefit and this may be at the expense of the Claimants. This ground for the appointment of an Administrator was argued vigorously at the hearing but a perusal of the pleaded grounds does not reveal that this is a matter that the claimants wished the court to consider. I restrict myself to consider only the pleaded grounds.

- [10] As I understand the pleaded grounds, the affairs of the Condominium Corporation are now being run by an Executive Committee. The Claimants say that this Committee fairly represents all of the unit owners. The defendants have now abandoned the effort to reduce the number of the members of the committee to three (3). Given this concession, it appears that two (2) of the five (5) grounds pleaded for the application have fallen away. Indeed, there seem to be no substantial grounds which remain.
- [11] In my view, the court should only interfere in the management of a Condominium Corporation where the majority uses its might to unfairly oppress the minority unit owners. In the present case, the Claimants face several hurdles. Firstly, they have not alleged that the defendants have managed the Condominium Corporation badly. In fact they have not alleged that the defendants managed at all. On the pleadings it is the Executive Committee that manages. Secondly, the defendants do not control a majority of the members on that committee. It is chaired by the representatives of the claimants. As I understand the authorities, especially in the Cook's case, the democratic government of the Condominium Corporation should not be overridden by the court except where absolutely necessary.
- [12] In the absence of any demonstrated mismanagement and ever conscious of the inevitable expense involved in the appointment of an Administrator, I decline to exercise any discretion to appoint an Administrator.
- [13] The Claimants will pay the costs of this application. I invite counsel to agree those costs. If there is no agreement, I will consider written submissions in this regard by both sides.

Brian Cottle
High Court Judge