



Neutral Citation Number: [2025] CIGC (Civ) 23

ND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

Cause no: G 2024-0177

BETWEEN

(1) ALAAEDDINE MUSTAPA SAHIBI
 (2) HANS HEINEKEN
 (3) HELGA HEINEKEN
 (4) JENS BIERTUMPEL
 (5) BOBAN KOSTICH
 (6) WILLIAM MERVYN
 (7) ANNE MERVYN
 (8) MATTHEW CARMINE BERNARDO
 (9) ALEXANDRE KOTCHERGUINE
 (10) JENNIFER RAE CHAILLER
 (11) AZEEZ AJIBOLA
 (12) JOSIE FRAZER
 (13) BARTLOMIEJ JESKE
 (14) GEMMA COWAN
 (15) HUSSAIN ALHASANI
 (16) REBECCA LESTER

Plaintiffs

AND

ELEVEN PARC LIMITED

Defendant

IN CHAMBERS

Coram:

Hon. Mrs. Justice Marlene Carter

**Appearances:
Plaintiffs**

Mr Guy Dilliway-Parry and Rachel Kelly of Priestleys Attorneys for the

Mr Pramod Joshi of McGrath Tonner Attorneys for the Defendant

Date of Hearing:

24 June 2025

**Draft Judgment
Circulated:**

26 June 2025

Judgment Delivered:

3 July 2025

[2025] CIGC (Civ) 23 - Sahibi and Ors v Eleven Parc Limited

HEADNOTE

Civil Procedure – GCR Order 14 – Defendant application for Summary Judgment and/or Strike out pursuant to GCR Order 18 r. 19 – Ability of proprietor to bring action against a Third Party relating to common property independent of Strata Corporation

JUDGMENT

1. The Defendant by summons sought the following:
 - (1) *Summary judgment for the Defendant pursuant to GCR Order 14 or 14A and or that the Plaintiffs pleadings be struck-out (in whole or in part) pursuant to GCR Order 18 r. 19 and or pursuant to the inherent jurisdiction of the Grand Court on the basis that:*
 - (a) *The Plaintiffs are precluded by the Strata Titles Registration Act (2013 Revision) from bringing these proceedings in their individual names or personal capacities and or*
 - (b) *The Plaintiffs' pleaded case in contract or negligence or breach of duty:*
 - (i) *has no reasonable prospect of success at trial and/ or*
 - (ii) *discloses no reasonable cause of action against the Defendant and or*
 - (iii) *may prejudice, embarrass, or delay the fair trial of this action and or*
 - (iv) *is otherwise an abuse of the process of the Court.*”
2. In the alternative, the Defendant sought the Court's order to compel the Plaintiffs to provide full replies to the Request for Further & Better Particulars of 18th October 2024, at paragraphs numbered 1, 3, 5, and 6 thereof, to which the Defendant states there were incomplete replies.

Background

3. The following facts taken from the Defendant's skeleton at paragraphs 8-10 are not in dispute
 - “8. *The Plaintiffs comprise the bulk of the owners at two strata's known as Blue Acres 1 (Strata Plan No. 918) and Blue Acres 2 (Strata Plan No. 917). The said stratum comprise 17 units in total housed in five separate two-storey buildings with units 1-8 falling under Blue Acres 1 and units 9-17 falling under Blue Acres 2. Each of these two strata are governed by a set of adopted By-Laws.*
 9. *The units not taking part in these proceedings are numbered 3 (owned by Desmond Chisolm), 8 (owned by Jermaine Perkins), 14 and 15 (owned by the*
[2025] CIGC (Civ) 23 - Sahibi and Ors v Eleven Parc Limited

Defendant company). Units 3 and 8 are in Blue Acres 1, whilst 14 and 15 are in Blue Acres 2.

10. *The Defendant company was the developer of the properties at Blue Acres 1 and Blue Acres 2.”*

The Law

4. Both parties referred the court to the judgment of Parker J. in *Folkvang Limited v Valorte Capital*¹ as a recent authority regarding the provisions of Order 14 r. 12 and GCR Order 18 r.19 and the court’s approach to applications under those provisions. The following extract (from that judgment at paragraphs 93-95) states the relevant legal principles in a succinct but comprehensive manner:

“93. Applications to strike out and for summary judgment are not lightly granted and are discretionary remedies. The pleaded case must be untenable and the jurisdiction is to be exercised sparingly and only in clear cases.

94. The applicant has to show that the claim does not merit a trial. A part of the exercise of the Court’s discretion is whether the Overriding Objective is met so that bringing these proceedings to an end would result in material time and costs advantages compared to allowing it to proceed to trial.

95. The fact that the Court takes the view that the case is weak and not likely to succeed is not sufficient.

96. The following general propositions derived from Cayman Islands authority apply to an application to strike out:

(a) “jurisdiction to strike out must be sparingly used, as its exercise deprives the party of the normal procedure for establishing rights by way of trial with the discovery and oral evidence tested by cross-examination”,

(b) “the court’s function is to decide whether the case is so plainly unarguable that there is no point in having a trial”,

(c) where the Defendant relies on several grounds of strike-out “the court must take a broad-brush approach and simply ask whether the case was a plain and obvious one for striking out rather than considering each ground in detail.”, and

(d) the fact that a case is weak on the documents does not mean it is unarguable and it must be “plainly and obviously unarguable” for

¹ [FSD Cause 199 of 2023 – unreported decision, 29th February 2024]

[2025] CIGC (Civ) 23 - Sahibi and Ors v Eleven Parc Limited

strike out to succeed. The Defendant has to show that the claim is bound to fail.

- (e) The court should not perform a mini trial without the benefit of discovery and the cross examination of witnesses, to decide the case on written material alone. Applications should not be granted when there is any serious conflict as to the material facts or any real difficulty as to the law.*
- (f) The facts as pleaded must generally be assumed to be true unless there are good reasons against this assumption.*

97. *Similarly in relation to summary judgment applications the Court must be satisfied that the Plaintiff's claim has no prospect of success. The Defendant has to prove that there is no real prospect of success. Although the test is somewhat lighter than in an application to strike out, the burden is still on the Defendant to show that the Plaintiff's case is 'worse than improbable' and even then the Court has a discretion as to whether the summary judgment should be entered.*

98. *In Easyair Ltd v Open Telecom Ltd [2009] EWHC 339 (ch), Lewison J summarized the approach to an application for summary judgment at paragraph [15]:*

- (i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success: Swain v Hillman [2001] 2 All ER 91;*
- (ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable; ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8];*
- (iii) In reaching its conclusion the court must not conduct a 'mini trial': Swain v Hillman.*
- (iv) This does not mean that the court must take a face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particular if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel.*
- (v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No.5) [2001] EWCA Civ 550;*
- (vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible*

[2025] CIGC (Civ) 23 - Sahibi and Ors v Eleven Parc Limited

on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case; Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63:

- (vii) *On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real as opposed to fanciful prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725.”*

The Capacity Issue

5. The Defendant submits that the Plaintiffs are not proper parties to the action because, once Strata Plans 918 and 917 [“the Strata Plans”] were registered, the working and intent of Section 5 of the Strata Titles Registration Act (“the Act”) relieved them of the capacity to bring the action. Upon registration of the Strata Plans, the Defendant states, the Plaintiffs as individual proprietors of the units could not pursue proceedings against a third party, in this case, the Defendant, in their personal capacities or personal names in any action relating to the properties at Blue Acres 1 and Blue Acres 2 [“the Properties”].
6. The Defendant’s written submission on this point states:

“25.

[2025] CIGC (Civ) 23 - Sahibi and Ors v Eleven Parc Limited

Section 5 of the Act is mandatory by its wording.

With effect from the date that the two respective strata plans were registered, the capacity of the owners changed – they (collectively) became bodies corporate (The Proprietors, Strata Plan No. 918 – also known as Blue Acres 1 and The Proprietors, Strata Plan No. 917 also known as Blue Acres 2), each with perpetual succession and capable of suing and being sued in its own name.

26. The individual Plaintiffs from that point forward lost the ability to sue in their personal names or personal capacities in connection with the properties contained within the respective Strata Plans.”

7. Counsel relied on this interpretation of Section 5 of the Act as well as the fact that there were no cases in the Cayman Islands, whether reported or unreported, in which an individual proprietor or proprietors had issued proceedings against a third party, outwith the Strata corporation. Counsel also sought to bolster his argument by pointing to the following:

“28 It is notable that,

(a) There are no case authorities in the Cayman Islands that we have been able to locate that seek to interpret section 5 of the Act. We suggest that the wording and intent is clear.

(b) The Cayman Islands Law Reform Commission by its report of 9th November 2016 made many recommendations as to reform of the Strata Titles in the Cayman Islands – no complaints or issues were raised, and no recommendations were made, as to section 5 of the Act.”

8. Counsel for the Defendant also referred to the Bye Laws of the Strata Plans asserting that this was another facet to his argument regarding the ceding of the individual proprietor’s rights. Counsel argued that there is no provision in either of the Bye Laws which give the proprietors the right to bring an action against a third party. He pointed to the obligations of each Strata Corporation, noting that they encompass all matters relating to the property owned by the individuals but now under the corporation. As such he concluded this included any enforcement of matters relating to the property against third parties.
9. In response, Counsel for the Plaintiffs emphasized that the threshold for the court to uphold an application either for summary judgment or for strike out of the Plaintiffs’ claim was very high. He submitted that the Plaintiffs’ claim was not one that was hopeless or with no realistic prospect of success.

10. Counsel submitted that the Strata Titles Registration Act was an act designed to relate to the administration and management of strata property only. The Act did not and was not intended to fundamentally change private law contractual rights. Counsel stated that the Court must look at the provision of Section 5 for its ordinary and natural meaning. To this end he advanced that there was nothing in that act or section that related to the compromising of private laws rights of proprietors. He stated that there was no basis for an interpretation of that section in the manner invited by counsel for the Defendant.
11. Counsel for the Plaintiffs submitted that Section 5 creates an entity but does not remove legal rights. He argued further that the Defendant presented no authority for his proposition concerning the restriction of a proprietor to enforce his property rights against a third party separate from the Strata Corporation.
12. In this regard counsel referred the court to the Court of Appeal decision in *Clappison*². Counsel submitted the following regarding that judgment:

“...the Cayman Islands Court of Appeal recognised the ability of individual proprietors of strata property who were also members of the Strata Corporation to join in proceedings in their personal capacity and in their “representative capacity” as members of the Strata Corporation in the case of *Thompson Resorts Limited and others v Clappison and others* [2017 (1) CILR 164] in which Newman J.A stated at paragraph 1 [HB/16/601]:

- i. *“The proceedings the subject of this appeal were commenced by originating summons issued by Carl Clappison and another (“the plaintiffs”), each acting in their capacity as proprietors of condos and as members of the strata corporation incorporated under the Strata Titles Registration Law designated as Strata Plan No. 381. All the members of the strata corporation had an interest in the subject matter of the proceedings, and they were properly joined in their **representative capacity** as Proprietors, Strata Plan No. 381. Had any of them wished, they could have applied to be joined as additional plaintiffs. Equally, had any of them wished, they could have given*

² [2017 (1) CILR 164]

[2025] CIGC (Civ) 23 - *Sahibi and Ors v Eleven Parc Limited*

notice of an intention to defend the application” [our emphasis added].”³

13. Counsel for the Plaintiffs further invited the Court to note the following as being the consequences which could flow from the interpretation of Section 5 that the Defendant offers, stating that these bolster his argument that the interpretation sought by the Defendant was unsustainable.

“(i). no individual proprietor of a strata property who is a counterparty to a development agreement in the Cayman Islands would be able to enforce their contractual rights against the Developer;

(ii) any developer retaining a majority interest by unit entitlement in a strata (which is not at all unusual) and which is then effectively in control of the Ex-Co would be exclusively seized of the power to determine whether to initiate proceedings against itself;

(iii) given that here the only parties who are able to enforce the Development Agreements are the parties thereto (as with all contractual claims privity of contract is required – the Strata Corporations as non-parties have no cause of action against the Developer), these agreements would effectively fall away and a proprietor would have no recourse against a developer; and

(v) if a proprietor has “lost the ability to sue in their personal names or personal capacities in connection with the properties” then it must follow that they also lack the capacity to be sued. The implication being that a developer would be unable to enforce a development agreement, or a strata would be unable to enforce bye-laws.⁴

The Pleadings issue

14. The Defendant alleges that:

- (i) The Plaintiffs have failed to set out any basis for a claim in negligence and have provided no particulars thereto in any event.
- (ii) The Reply to Defence fails to address the defects pointed out in the Defence.
- (iii) That the claim in contract was answered by paragraphs 12 and 13 of the Defence, to which the Plaintiffs have raised no defence.

³ At paragraph 22 of the Plaintiffs’ submissions

⁴ At paragraph 20 of the Plaintiffs’ submissions

(iv) Any implied term, is not sufficiently particularised, is limited in time and constrained by an entire agreement clause in the individual development agreements.

15. The Plaintiffs refute this submission, insisting that the pleadings are sufficiently particularised to enable the Defendant to know the claim that is alleged.

Court's considerations

16. Section 5 of the Act provides as follows:

“PART III- Corporations

5. (1) The proprietors of all the strata lots contained in any strata plan shall, upon registration of the strata plan, become a body corporate (hereafter referred to as “a corporation”) under the name “The proprietors, Strata Plan No.” (with the appropriate number of the strata plan inserted in the blank space).

(2) Every corporation shall have perpetual succession, a common seal and be capable of suing and being sued in its name.

(3) Any enactment providing for the incorporation, regulation and winding-up of companies shall not apply to corporations.”

17. Counsel for the Defendant could point to no provision in the Act which **expressly** limits the right of an individual proprietor to bring an action against a third party to enforce rights in respect of his property once registered as part of the Strata Plans. To this Court's mind it is to be expected that any enactment which sought to deprive an individual of such a right would be expressly stated and not left to be implied by interpretation.

18. As submitted by counsel for the Plaintiffs, Section 5 of the Act is an enabling section only. There is nothing in that section that seeks to deprive a proprietor of his right regarding his property or to state that such a right is subsumed or vests exclusively in the Strata Corporation. Counsel for the Defendant is correct to state that a Strata Corporation as a body corporate can sue or be sued in its own right. Proprietors are part of that body corporate. However, it does not follow that a proprietor who is part of a Strata Corporation vests his right regarding his property and the enforcement rights relating thereto solely to the Strata Corporation.

19. Counsel for the Plaintiffs submitted that if Section 5 was to have the effect that the Defendant suggested, there must be a clear indication that the development contracts between the Plaintiffs

and Developer were voided or the rights thereunder assigned to the Strata. There is no provision of this sort evident in the Act or in the Byelaws by which each of the Strata Plans are governed.

20. It is not particularly relevant or noteworthy that there are no instances of individual proprietors suing a third party in the Cayman Islands case law. In such a case, proprietors would not necessarily need to join the Strata Corporation as a party to the proceedings, hence the result of a search for instances of proceedings involving Strata Corporations may not accurately capture this relevant fact.
21. On the particular facts of this case, I am not persuaded by the Defendant's arguments that the Strata Corporations are the better parties to bring an action against the Defendant. There are obvious issues regarding privity of contract which would arise if such a claim was made. There is neither law nor authority presented to this court that supports this somewhat extreme proposition. It is the individual proprietor who contracted with the developer for the construction of his property. The development agreement does not mention the Strata Corporations since neither Corporation was in existence at the time that the development agreements were executed. Without evidence of assignment under the contract between strata and individual proprietor when the strata corporation was subsequently formed and individual proprietors became part of such a corporation, or an express provision in the Bye Laws, it is difficult to envisage a claim that would not be immediately challenged for lack of privity if the strata corporation sought to enforce the development agreement to which it was not a party.
22. I am not persuaded by the argument that the clause in the development agreement which sought to limit the time for bringing defects to the attention of the developer for remediation could affect this decision. The authorities all run counter to such an argument.
23. Having perused the pleadings, and in light of my determination on the capacity issue above, this is not a claim which can be found to have no reasonable prospect of success or discloses no reasonable cause of action against the Defendant. In *Easyjet* the court noted that in reaching its conclusion on summary judgment a court must be mindful of not only the evidence actually placed before it on the application but also evidence that can reasonably be expected to be available at trial.⁵

⁵ Royal Brompton Hospital NHS Trust v Hammond (No. 5) [2001] EWCA Civ 550

[2025] CIGC (Civ) 23 - *Sahibi and Ors v Eleven Parc Limited*

24. This court can give further directions to ensure that there is nothing to prejudice, embarrass, or delay the fair trial of this action. There is no evidence of an abuse of process in this case. As Parker J. noted in *Folkvang*:

“Applications to strike out and for summary judgment are not lightly granted and are discretionary remedies. The pleaded case must be untenable and the jurisdiction is to be exercised sparingly and only in clear cases. The applicant has to show that the claim does not merit a trial. A part of the exercise of the Court’s discretion is whether the Overriding Objective is met so that bringing these proceedings to an end would result in material time and cost advantages compared to allowing it to proceed to trial. The fact that the Court takes the view that the case is weak and not likely to succeed is not sufficient.”

25. While the defendant may seek to have better particulars of the claim due to their deficiency, a point not conceded by the Plaintiffs, at this stage there are sufficient particulars in the pleadings for the defendant to know the case against him. The Plaintiffs have indicated that they intend to compile a Scott Schedule which will be of relevance in further pinpointing the alleged defects to each Plaintiff’s individual property. The court will invite the Plaintiffs to act with some urgency on this issue.
26. In this case, having considered the pleadings, this court has concluded that this is not an instance where the case is weak or unarguable. I have also considered the argument relating to strike out of the claim. I am not persuaded that the defendant has reached the threshold required for this court to make such an order.
27. The application for summary judgment fails. Similarly, the application to strike out the Plaintiffs’ claim also fails.
28. The Defendant shall pay the Plaintiffs’ cost of this application.



Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court