

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

3
4 **CIVIL DIVISION**

5 **CAUSE NO. G 413 OF 2013**

6 **IN THE MATTER OF THE STRATA TITLES REGISTRATION LAW (2005 REVISION)**

7 **BETWEEN:**

8 **CARL CLAPPISON AND BEVIC EVANS**

9 **PLAINTIFFS**

10 **AND:**

11 **(1) THE PROPRIETOR STRATA PLAN NO. 381**
12 **(2) THOMPSON RESORTS LIMITED**
13 **(3) CASTAWAYS TIMESHARE LIMITED**

14
15 **DEFENDANTS**

16
17 **Appearances: Mr. James Kennedy of Samson & McGrath for the Plaintiffs.**

18 **Mr. Matthew Dors of Ritch & Conolly for the First Defendant.**

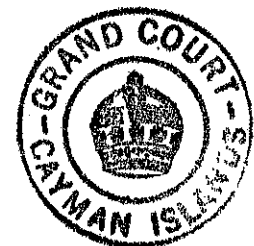
19 **Mr. Ian Huskisson of Travers Thorp Alberga for the Second Defendant.**

20 **Mr. Hector Robinson of Mourant Ozannes for the Third Defendant.**

21 **Before: Hon. Justice Mangatal**

22 **Heard: April 21, 2015**

23 **IN CHAMBERS**



24

1 Civil Practice and Procedure – Originating Summons – Order 28 of *Grand Court Rules* – whether to order
2 cross-examination of deponents of affidavits – whether disputes as to fact – *Strata Titles Registration*
3 *Law*, section 9 – order 94 rule 4 of *Grand Court Rules*– “On Cause Shown”
4

5 **JUDGMENT**
6

7 1. This is an application by the Plaintiffs by way of summons filed February 6, 2015. They seek the
8 following relief:

9 “The matter be listed for hearing with the affidavits filed to date to stand as
10 evidence in chief and that the deponents of the following witness statements
11 be in attendance at the hearing of the originating summons to be cross-
12 examined as to their statements:
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- 14 (a) Carl Clappison;
15 (b) Kel Thompson;
16 (c) Joanne Connolly.”
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18 2. The proceedings were commenced by way of originating summons, filed November 25, 2013.
19 The main substantive relief sought by the Plaintiffs has been set out in the originating summons
20 as follows:

21 “... the Plaintiffs seek the following relief and seek the determination of the
22 Court on the following questions, namely,

- 23 1. That the Court appoints an [sic] BCQS Management as
24 administrator to act in place of the Executive Committee of The
25 Proprietors, Strata Plan No. 381 for an initial period of one year from
26 the date of making this Order.

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2. A declaration that bye-law 2 is ultra vires the powers and duties of the Proprietors, Strata Plan No. 381 as being inconsistent with the Strata Titles Registration Law and that it be removed from the bye-laws.
....”

3. Counsel for the First Defendant has decided to take a neutral position with regard to the substantive, as well as in relation to the instant application for cross-examination. The principal stance taken, on the other hand, by the Second and Third Defendants is that cross-examination is not necessary and that the Plaintiffs’ application is dismissed.



4. All parties are agreed that the second issue in respect of which the Plaintiffs seek a declaration is a straight issue of law and does not concern any issues of fact. It is the first issue in respect of which the parties have found themselves in disagreement. An application to appoint an administrator of a Strata Corporation is provided for in section 9 of the *Strata Titles Registration Law* (“the Law”). The marginal note reads “administration”, and the section reads as follows:

“9 (1) Every corporation, or any person having an interest in a strata lot may apply to the court for the appointment of an administrator.

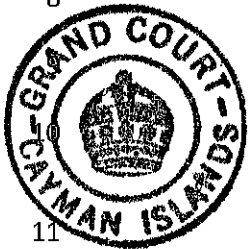
(2) The court may, in its discretion on cause shown, appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit. The remuneration and

1 expenses of the administrator shall be an administrative expense within
2 the meaning of this Law.

3 (3) The administrator shall, to the exclusion of the corporation, have the
4 duties and powers of the corporation or such of those duties and powers
5 as the court shall order.

6 (4) The administrator may delegate any of the powers vested in him under
7 sub section (3).

8 (5) The court may, in its discretion on the application of the administrator or
any person referred to in sub section (1), remove or replace the
administrator.



11 (6) On any application made under this section, the court may make such
12 order for the payment of costs as it thinks fit."

13 5. Order 94 Rule 4 of the *Grand Court Rules* ("the GCR") provides as follows:

14 "4. An application for the appointment of an administrator pursuant to
15 Section 9 of the *Strata Titles Registration Law 1973* may be made by
16 originating summons or motion and the provisions of Order 30 shall apply as
17 if the administrator was a receiver appointed pursuant to that Order."

18

19 **The Plaintiffs' Submissions**

20 6. Mr. Kennedy, in written submissions filed on behalf of the Plaintiffs, referred to Order 28, Rules
21 4 (3) and (4) of the GCR. For a proper understanding, it is best in my view to refer to the entire
22 rule 4. It provides as follows:

23

1 **Directions, etc., by Court**

2
3 *"(1) The Court by whom an originating summons is heard may, if the liability of*
4 *the Defendant to the Plaintiff in respect of any claim made by the Plaintiff is*
5 *established, make such order in favour of the Plaintiff as the nature of the case*
6 *may require, but where the Court makes an order under this paragraph against a*
7 *defendant who does not appear at the hearing, the order may be varied or revoked*
8 *by a subsequent order of the Court on such terms as it thinks just,*

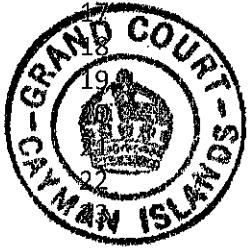
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10 *(2) Unless on the first hearing of an originating summons the Court disposes of*
11 *the summons altogether or makes an order under Rule 8, the Court shall give*
12 *such directions as to the further conduct of the proceedings as it thinks best*
13 *adapted to secure the just, expeditious and economical disposal thereof.*

14
15 *(3) Without prejudice to the generality of paragraph (2), the Court shall, at as*
16 *early a stage of the proceedings on the summons as appears to it to be*
17 *practicable, consider whether there is or may be a dispute as to fact and whether*
18 *the just, expeditious and economical disposal of the proceedings can accordingly*
19 *best be secured by hearing the summons on oral evidence or mainly on oral*
20 *evidence, and, if it thinks fit, may order that no further evidence shall be filed and*
21 *that the summons shall be heard on oral evidence or partly on oral evidence and*
22 *partly on affidavit evidence, with or without cross-examination of any of the*
23 *deponents, as it may direct.*

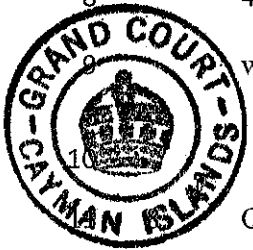
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25 *(4) Without prejudice to the generality of paragraph (2), and subject to*
26 *paragraph (3) the Court may give directions as to the filing of evidence and as*
27 *to the attendance of deponents for cross-examination and any directions which*
28 *it could give under Order 25 if the cause or matter had been begun by writ and*
29 *the summons were a summons for directions under that Order.*

30
31 *(5) The Court may at any stage of the proceedings order that any affidavit, or*
32 *any particulars of any claim, defence or other matter stated in any affidavit,*
33 *shall stand as pleadings or that points of claim, defence or reply be delivered and*
34 *stand as pleadings."*
35

36 7. Counsel indicated that directions were given by Smellie CJ in this matter at a hearing on
37 September 8 2014. These included directions relating to the filing of affidavit evidence and the
38 fixing of a final hearing and at that time no direction was given relating to cross-examination of



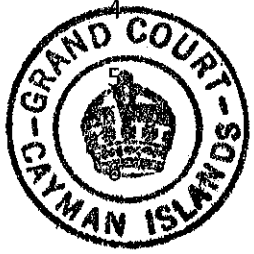
1 witnesses. However, Mr. Kennedy points out that at that time, the 2nd and 3rd Defendants had not
2 yet filed and served their evidence in opposition to the originating summons and nor had the
3 Plaintiffs' affidavits in response yet been filed. Indeed, it was just at that hearing that the 2nd and
4 3rd Defendants were added as Defendants upon their application to be joined. It is the Plaintiffs'
5 position that this evidence now being complete as from December 2014, it is from that date that
6 the Court would now be in the position to consider whether the evidence involved a dispute as to
7 fact and how best to hear any disputed evidence. Indeed, Mr. Kennedy submits that Order 28 r
8 4(3) makes it a mandatory requirement for the Court to consider how the evidence in the matter
will be heard, and not the parties.



9 Counsel further argued that the 2nd and 3rd Defendants' desire to simply press on to trial without
10 the Court determining this issue would lead either to the trial judge adjourning the final hearing at
11 unnecessary expense to all parties to allow for cross-examination, or, the matter being heard
12 without cross-examination, thereby rendering the matter subject to appeal and a possible
13 application for a re-hearing being made. Reference was made to the well-known decision of the
14 Judicial Committee of the Privy Council in *Chin v Chin* [2001] UKPC 7.
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18 9. As regards disputes as to fact, Mr. Kennedy made reference to the evidence by way of affidavit
19 from Mr. Clappison on March 24 2014. In that affidavit at paragraphs 25 to 54 he argues that the
20 deponent outlines his and other owners' discontent with the manner in which the Strata is being
21 run by the Executive Committee and in particular by Thompson Resorts Limited ("TRL") and
22 Mr. Kel Thompson. Counsel submitted that the specific issues that arise include:

- 23 a. ~~Conflicts of interest between the current Executive Committee, TRL as~~
24 management agent for the Strata and TRL as owner of the Reef Resort.



- 1 b. Specific and manifold instances of inappropriate billing of expenses to owners.
- 2 c. General discontent over the size of the expenses incurred by the Executive
- 3 Committee and resultant costs to individual owners.
- 4 d. Inappropriate marginalization of owners at AGM by both personally
- 5 threatening behaviour and by vote manipulation.
- 6 e. Failure to collect debts, to audit the accounts, and to hold timely AGM's.

7

8 10. Counsel avers that the 2nd Defendant responded to these allegations in Mr. Kel Thompson's 2nd

9 affidavit. In this affidavit Mr. Thompson denies any wrongdoing and Mr. Kennedy characterizes

10 Mr. Thompson's evidence as attempting to "stand over the billing issues". He says that whilst it is

11 not explicitly stated, it can only be inferred from the continued defence to the action that TRL

12 oppose the appointment of an independent management agent and deny the allegations against

13 them which the Plaintiffs say would merit the removal of the current Executive Committee.

14

15 11. Additionally, it was argued that further evidence was filed on behalf of the Plaintiffs which

16 directly contradicted the evidence filed by the Defendants and made further allegations of

17 ongoing mismanagement. It was submitted that at the conclusion of the evidence it is apparent

18 that there is little or no common ground between the parties on the issue of the proper

19 management of the Strata by the Executive Committee.

20

21 12. The gravamen of the Plaintiffs' submission is set out at paragraph 16 of the written submissions,

22 and is that for the Court to determine, as set out in section 9 of the *Law* whether "in its discretion

1 on cause shown” an administrator should be appointed, will require the Court to determine as a
2 matter of fact any one of the following matters:

3 a. Whether there has been established a demonstrated inability to manage the
4 Strata.

5 b. Whether there has been demonstrated substantial misconduct or
6 mismanagement or both in the affairs of the Strata.

7 c. Whether the appointment is necessary to bring order to the affairs of the Strata.

8 d. Whether the struggle between competing groups in the Strata is such as to impede or
9 prevent proper governance.



10

11 **The 2nd Defendant's Submissions**

12 13. Mr. Huskisson on behalf of the 2nd Defendant in his written submissions identified one of the
13 issues as being whether an administrator should be appointed to prevent what the Plaintiffs
14 perceive to be overcharging in respect of strata fees. He submitted that this turns on whether it is
15 permissible for the Plaintiff strata owners to bear a share of the costs of operating the Reef
16 Resort. There is evidence to the effect that Castaways and the Reef Resort are located on the
17 same stretch of beach and are run as a condo/hotel.

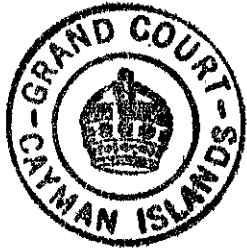
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19 14. Mr. Huskisson argued that there is no dispute that the Strata bears a share of the costs of
20 operating the Reef Resort. Further, that the existence of these amenities was known to the
21 Plaintiffs when they purchased their units and that no reasonable purchaser could have thought
22 that the resort amenities would be provided free of charge.

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15. Counsel referred to correspondence between himself and Mr. Kennedy in which he asked Mr. Kennedy to identify the issues he wished to cross examine on. The only issues which Mr. Huskisson says that Counsel for the Plaintiffs appeared to be able to identify were as follows:

- a. the competent running of the Strata;
- b. the allocation of costs;
- c. whether a conflict of interests exists.



16. It was submitted that the competent running of the Strata is not an issue of fact and that the manner in which the Strata has been run has been well known to the Plaintiffs. Additionally, that whether it is permissible for the Strata to have Resort costs allocated to it is a matter of law for the Court to decide.

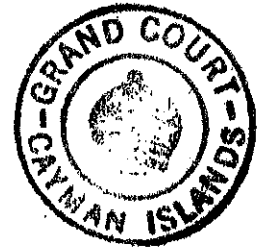
17. It was also submitted that the allocation of costs is not in dispute, that the allocation of costs between the Resort and the Strata is clearly set out in the accounts, and that both sides have provided further commentary in their affidavits.

18. It was posited that whether a conflict of interests exists is an issue of law for the Court to decide, not an issue of fact. Further, that it is accepted that TRL runs both the Strata and the Resort.

19. Reference was made to the decision of the Judicial Committee of the Privy Council in *Eldemire v Eldemire* (1990) 38 WIR 234, where at pages 238-239 Lord Templeman stated:
Judgment – *Carl Clappison and Beric Evans v. The Proprietors, Strata Plan No. 381* Cause No. G413 of 2013 04.05.15

1 *"As a general rule, an originating summons is not an appropriate machinery for*
2 *the resolution of disputed facts. The modern practice varies. Sometimes when*
3 *disputed facts appear in an originating summons proceedings, this court will*
4 *direct the deponents who have given conflicting evidence by affidavit to be*
5 *examined and cross-examined orally and will then decide the disputed facts.*
6 *Sometimes the court will direct that the originating summons proceedings be*
7 *treated as if they were begun by writ and may direct that an affidavit by the*
8 *applicant be treated as a statement of claim. Sometimes, in order to ensure that*
9 *the issues are properly deployed, the court will dismiss the originating summons*
10 *proceedings and leave the applicant to bring a fresh proceeding by writ. In*
11 *general, the modern practice is to save expense without taking technical*
12 *objection unless it is necessary to do so in order to produce fairness and*
13 *clarification."*

14
15 20. Reference was also made to the decision in *Re Cotorro Trust* [1997 CILR 1], which was a trust
16 case where Smellie CJ stated, at page 13, that "It is the general rule that proceedings against
17 trustees of a contentious nature, charging the trustees with a breach of trust or with default in the
18 proper performance of their duties, are normally to be commenced by writ and not by originating
19 summons. This is to provide the trustees with the full opportunity and machinery for discovering
20 precisely what are the charges being leveled against them."



21
22 21. It was submitted that there were options available to the Court as follows:

- 23 a. Dismiss the originating summons and require the Plaintiffs to issue a writ.
- 24 b. Direct that the affidavits in effect stand as pleadings and allow cross-
25 examination at trial on the content of the affidavits.
- 26 c. Require the Plaintiffs to identify issues of fact for cross-examination. Provided
27 the Plaintiffs are in a position to identify facts that are in dispute TRL would
28 have no objection to this course being adopted. (Emphasis that of Counsel)

1 d. Dismiss the application and list the matter for trial on the affidavit evidence
2 and with no cross examination. Mr. Huskisson submitted that given the
3 absence of any disputes of fact, this would appear to be the best course to
4 adopt.



5 **The 3rd Defendant's submissions**

6 22. Mr. Hector Robinson, who appeared for the 3rd Defendant, adopted the written submissions of the
7 2nd Defendant, and also submitted that it is important to bear in mind that the originating
8 summons in these proceedings was filed in accordance with a particular statutory regime. He
9 pointed out that whilst the relevant section of the *Law* speaks of the Court acting in its discretion
10 "on cause shown", the *Law* provides no guidance as to exactly what standard or form such proof
11 should take. Counsel further stated that as far as he is aware, there are no reported cases that have
12 provided guidance as to the meaning of those terms in the specific context of this legislation.

13
14 23. Mr. Robinson went on to state that the 3rd Defendant is not taking any great issue with the matters
15 listed at paragraph 16 of the Plaintiffs' submission in the sense that, if the Court is satisfied in
16 respect of any one of the four points there listed, it would be appropriate for the Court to appoint
17 an administrator. Where he differs, is that he says that none of those matters involve the
18 resolution of disputes as to fact.

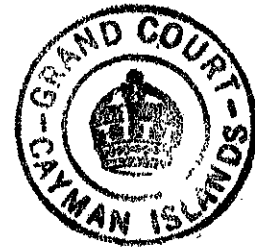
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20 24. The argument continued that, it is no accident that Order 94 Rule 4 speaks of the application
21 being made by originating summons or by motion. This, it is said, is because a summary
22 procedure was contemplated, the very aim of which would be to avoid such matters as cross-
23 examination. Mr. Robinson urged the Court to take the view that, although Order 28 states that

1 the Court may order affiants to attend for cross-examination, this does not mean that such an
2 order would be appropriate in every type of proceedings brought by way of originating summons.

3
4 25. This calls into question, Counsel submitted, the extent to which the Court should make
5 determinations as to fact, or investigate allegations of breach of duty, and make final
6 determinations in respect of such matters in proceedings like these.

7
8 26. Looking at the issue from yet another perspective, it was posited that if the Plaintiffs are unable to
9 establish by way of affidavit evidence that there has been cause shown, then it may well be that
10 the Plaintiffs' application for an administrator to be appointed should be dismissed, and not so
11 much a signal that cross-examination is necessary or should be ordered.

12
13 27. It was submitted that the application for cross-examination ought to be dismissed, the whole
14 intention of the statutory scheme was for the management to be vested in the body established by
15 the Bye-laws, and for the Court to lean in that direction, unless good cause is shown in a
16 summary way.



17
18 **Resolution of the Issues**

19 28. In addition to the other Orders and Rules of the GCR to which I have been referred, I note that
20 Order 5 addresses the mode of bringing proceedings. Order 5 Rule 3, bears the heading
21 "Proceedings which must be begun by way of originating summons", and states as follows:

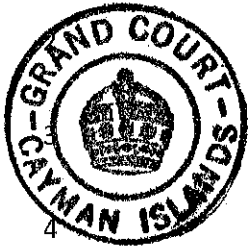
22 *"3. (1) Proceedings by which an application is to be made to the Court or a Judge*

23 *thereof under any Law must be begun by originating summons except*

Judgment – *Carl Clappison and Beric Evans v. The Proprietors, Strata Plan No. 381 Cause No. G413 of 2013 04.05.15*

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where by these Rules or by or under any Law the application in question is expressly required or authorized to be made by some other means.



(2) This rule does not apply to an application made in pending proceedings."

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29. Thus, it would appear that were it not for Order 94 Rule 4 authorizing the bringing of proceedings under section 9 of the *Law* by way of originating motion, the proceedings would have to be begun by way of originating summons. In any event, both of these types of proceedings are not considered appropriate where there are likely to be substantial disputes as to fact.

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10

30. As Mr. Robinson says, the *Law* and section 9 do not themselves provide any guidance as to what "on cause shown" means. Section 9 is also interesting because, although it speaks of the appointment of an administrator, it does not speak of the removal of an executive committee, or of the appointment of an administrator to replace an executive committee (my emphasis). Section 9 is positioned right after section 8 which treats with the subject matter of the Court's power to appoint a fit and proper person where the court is satisfied that there is no person able to vote in respect of a strata lot. Section 9 also makes its appearance in the *Law* before there is any mention of an executive committee. The establishment of an executive committee is provided for in the bye-laws set out in Schedule 1 of the *Law*, which section 21 (2) (a) of the *Law* states "shall not be amended or varied except by super-majority resolution". It is Bye-law 13 of Schedule 1 which states:

20

"Executive committee.

21

13. There shall be an executive committee of every corporation which shall, subject to any restriction imposed or direction given at a general meeting, exercise and perform the duties of the corporation."

23

24

1 31. In paragraph 15 of his March Affidavit Mr. Clappison refers to exhibiting the bye-laws of the
2 Strata as amended as "CC3". However, that exhibit was not placed in the Bundle for the purpose
3 of this hearing.

4
5 32. I appreciate that the term "on cause shown" may have its own context in the *Law* dealing with
6 Strata Titles and their management. However, the phrase "on cause shown" or similar phrases
7 are used in other laws and there are authorities dealing with the meaning of this term, whether in
other legislation or otherwise. These will have to be explored at the substantive hearing. None
have been cited to me by Counsel in respect of this application.

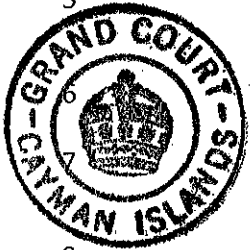


11 33. The term "on cause shown" seems in my judgment to be quite wide; there has been no restriction
12 placed in the legislation as to its meaning. Under the section the Court would appear to have a
13 wide discretion. In my view, on its plain meaning, there can be various reasons, circumstances
14 and bases that may comprise "cause shown". Correspondingly, the nature of the issues giving rise
15 to an application may vary widely also. It would therefore seem that the expression "on cause
16 shown" may involve issues of law or it may involve issues of facts, or both. Further, the section
17 can in my view contemplate specific, as well as general allegations, sole, as well as multiple
18 bases. However, because the procedure is by way of originating summons or by originating
19 motion it plainly is not contemplated that there be substantial dispute as to facts. The crucial
20 consideration on this application is therefore what is the true nature of the issues involved in this
21 case?

22
23 34. Having looked at the relief sought and the Affidavit evidence carefully, it does appear that most
24 of the matters requiring determination by the court involve issues of law. However, in the course

1 of examining the question whether, in its discretion, the court should on cause shown, appoint an
2 administrator it does seem to me that there may be a few matters of fact that the court will need to
3 determine in order to decide the following issues:-

- 4 a. Whether specific or manifold instances of inappropriate or excessive billing
5 of expenses to owners have occurred;
- 6 b. Whether substantial misconduct or mismanagement, or both, in the affairs of
7 the Corporation, has been demonstrated.



8

9 35. In my view, these issues cannot be said to be inappropriately raised by way of originating
10 summons. Indeed, Order 94 Rule 4 expressly provides for applications under section 9 of the *Law*
11 to be brought in this manner. Since the section does not define or limit what is meant by "on
12 cause shown", it cannot be said that it would be inappropriate to raise issues of fact on such an
13 application. Further, although the resolution of some of the issues of law, such as whether bye-
14 law 2 is ultra vires the powers and duties of The Proprietors, Strata Plan No. 381 and whether it is
15 inconsistent with the *Strata Titles Registration Law*, if resolved in the Plaintiffs favour may
16 obviate the need for most aspects of the enquiry as to cause shown, it would not necessarily
17 resolve all issues. Further, in the event that that question is resolved against the Plaintiffs, the
18 question of whether cause has been shown such as to move the court to appoint an administrator
19 would become a relatively more significant aspect of the entire application and perhaps the
20 relevant considerations would be different in nature than they would be if the question involving
21 the bye-law is resolved in favour of the Plaintiffs.

1 36. I will give just a few instances that in my view demonstrate that it would be appropriate for the
2 Court to be assisted by cross-examination. Further, that the just, expeditious and economical
3 disposal of the proceedings requires this approach. In his Affidavit filed March 14 2014, Mr.
4 Clappison at paragraph 27 states that at a particular point in time TRL began to consistently
5 overspend as compared to budget as well as grossly inflate the annual costs. He goes into this in
6 some detail in further paragraphs. At paragraph 53 he states “ The manner in which owners were
7 being treated at the AGM’s in [sic] entirely unacceptable, including Kel Thompson personally
8 threatened dissenting owners with physical violence and dismissing off-hand owner
9 grievances.....”

10
11 37. At paragraph 7 of his Affidavit filed October 22, 2014 Mr. Kel Thompson states “In paragraph 27
12 of his affidavit Mr. Clappison claims that TRL has “grossly inflated” the annual expenses
13 allocated to the Castaways strata. It has done no such thing....”

14 (my emphasis)



15
16 38. At paragraph 37.2 of his Affidavit filed March 14, 2014, Mr. Clappison states “There is no
17 evidence of competitive quotes being received for this service which would be common practice
18 for most large single line items on a Strata income statement particularly where one contract
19 exceeds \$50,000 in one year. The threshold for competitive quotes should be much lower given
20 the overall budget of the Strata. Despite this any attempt by us to engage with TRL and Mr.
21 Thompson at any level over issues of costs and accountability are simply met with evasiveness,
22 disdain and eventual use of Article 2(2) of the bye-laws to push through budget approvals and
23 increases in fees.”

1 39. In his October 22 2014 Affidavit, Mr. Thompson at paragraph 13 states:

2 "Mr. Clappison's principal complaint appears to be over the lack of "competitive
3 quotes". The answer to this is that competitive quotes might be useful if the work
4 was being sourced externally. We have tried outsourcing the work in the past and
5 found it to be unsatisfactory. We believe the best option is to employ our own
6 staff, whose salaries are a fraction of the costs of hiring external companies to do
7 the work".

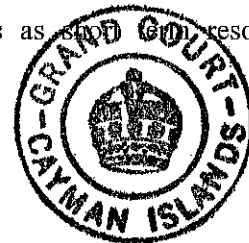
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10 40. Joanne Connolly, Assistant Secretary of the 3rd Defendant CTL also swore an affidavit on the 21st
11 of October 2014. Mr. Clappison has filed an affidavit in response to Mr. Thompson's Affidavit
12 and to Miss Connolly's Affidavit, sworn 20th November 2014.

13

14 41. At paragraph 4 of the Connolly Affidavit it is stated "...Approximately 90 percent of the
15 apartments within Castaways are part of a rental pool which serves as ^{part of} Grand Cayman resort
16 accommodation for holiday makers visiting Grand Cayman."



17

18 42. In response, in his November Affidavit, at paragraph 54, Mr. Clappison states that he does not
19 believe that Miss Connolly is correct about this 90 percent. He proceeds to list the names of
20 owners who he says are not part of the rental pool and states that he believes this represents 42
21 percent of the total units.

22

23 43. Although I don't recall Counsel for the Plaintiffs mentioning this as an issue of fact, it does seem
24 to me that such an issue, and a few others, would benefit from cross-examination. Counsel Mr.
25 Huskisson had argued that the Plaintiffs should be made to identify the facts that are in dispute. I
26 do not think that that is necessary, or required. What I have attempted to do at paragraph 34

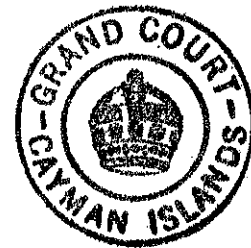
1 above, is to identify the broad issues that require cross-examination, as was done in paragraph
2 [18] of *Chin v Chin*.

3
4 44. In all of the circumstances, I am of the view that it would be appropriate to make an order
5 pursuant to Order 28, Rules 3 and 4 and to grant the Plaintiffs the relief sought. The order made
6 on September 8 2014 had contemplated a 2 day hearing, with the first day being a suggested
7 reading day. The cross-examination required in this matter should be quite brief and in my
8 estimation should not take a whole day.

9
10 45. I would therefore make the orders/ vary the order made on 8 September 2014 as follows:

11 1. That the matter be listed for hearing with the following deponents of
12 affidavits to attend the hearing for cross-examination on their respective
13 affidavits:

- 14 (a) Carl Clappison;
- 15 (b) Kel Thompson;
- 16 (c) Joanne Connolly.



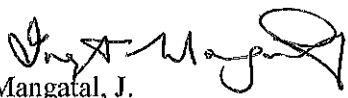
17
18 2. That the hearing is to be listed for three days in chambers (the first day being
19 a suggested reading day) on the first convenient open date for hearing before
20 Mangatal J. The parties have liberty to apply for the matters to be heard by
21 another Grand Court Judge in the event of listing difficulties.

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3. Costs of this application to the Plaintiffs against the 2nd and 3rd Defendants to be taxed if not agreed.

4. Plaintiffs' Attorneys-at-law to prepare, file and serve the formal order.

Dated this 4th day of May, 2015


Mangatal, J.
Judge of the Grand Court

