



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

**FSD CAUSE NO. 143 OF 2019 (NSJ)
(FORMERLY CAUSE NO. 13 OF 2019)**

In Open Court

December 7-8, 2021

Before the Honourable Mr Justice Segal

IN THE MATTER of an Application by Cayman Shores Development Ltd. and Palm Sunshine Ltd. under section 140(1) of the Registered Land Act (Revised) (the "**Act**"), or alternatively under section 96 of the Act

AND IN THE MATTER of an Application by Cayman Shores Development Ltd and Palm Sunshine Ltd, pursuant to section 96 of the Act, that certain rights under certain restrictive agreements registered against Block 12D 108 and Block 12C 27 be wholly or partially extinguished or modified

BETWEEN:

- (1) **CAYMAN SHORES DEVELOPMENT LTD.**
- (2) **PALM SUNSHINE LTD.**

PLAINTIFFS

AND:

- (1) **THE REGISTRAR OF LANDS**
- (2) **THE PROPRIETORS, STRATA PLAN NO. 79 (known as LION'S COURT)**
- (3) **THE PROPRIETORS, STRATA PLAN NO. 147 (known as REGENT'S COURT)**
- (4) **THE PROPRIETORS, STRATA PLAN NO. 215 (known as KING'S COURT)**
- (5) **THE BRITANNIA PROPRIETORS** (being the persons whose names and addresses are set out in Section B of **Schedule 1** to the Re-Amended Originating Summons)

DEFENDANTS



ORDER

UPON HEARING Leading Counsel for the Plaintiffs, Counsel for the First Defendant, Leading Counsel for the Second, Third and Fourth Defendants, and such members of the compendious Fifth Defendant listed as represented by Walkers in Section B of Schedule 1 appended to their Defence and Counterclaim (the "**Walkers Defendants**") and Counsel for White Dove International Ltd ("**White Dove**"), being one member of the compendious Fifth Defendant

AND UPON the trial of the Plaintiffs' Re-Amended Originating Summons sealed on 31st July 2019, the Walkers Defendants' Amended Points of Counterclaim dated 2nd October 2020 and White Dove's Points of Counterclaim dated 30th July 2019 (in relation to the counterclaims, on the issue of liability only)

AND UPON the Court having handed down its written reserved judgment thereon on 9th June 2021 (the "**Judgment**")

AND UPON the Plaintiffs' appeal to the Cayman Islands Court of Appeal and the Walkers Defendants respondents' notice filed therein (the "**Appeal**")

AND UPON the First Defendant indicating that, having regard to the references to her position in paragraphs 149(h) and 213 of the Judgment, she did not wish to object to an order being made for the rectification of, and directing her to rectify, the register by including references to and registering the Rights (as defined in the instruments set out at Schedule 2 appended hereto (the "**Instruments**") (the "**Rights**")) as easements in the manner set out in paragraph 1 of the Order made below **AND UPON** all parties acknowledging and agreeing that the First Defendant's decision not to object to such an order shall not affect and shall be without prejudice to the Appeal and shall not be treated as constituting an approval by her of the form of the Instruments for the purpose of section 105 of the Act.



AND UPON the Plaintiffs undertaking to the Court, as a condition to the making of and in connection with the order made in paragraph 3 of the Order below, that during the period of the stay granted by paragraph 3 (save with the permission of the Court or the Court of Appeal or the written consent of the Second, Third, Fourth and Fifth Defendants):

- (a). they will observe the terms of and act in accordance with the Restrictive Agreements (as defined in paragraph (1) of the declaration made and set out below) (provided that this undertaking shall not affect the Plaintiffs' rights and obligations in the event that the Court of Appeal allows the Appeal and determines that the Rights are not binding on the Plaintiffs as easements or that rectification of the register shall not be ordered to record the Rights as easements).
- (b). they will not create or grant any rights over or in relation to Block 12C Parcel 27 and Block 12D Parcel 108 which will or could interfere with (or have the effect of interfering with) the exercise of the Rights as easements upon and in the event of the rectification of the register to record the Rights as easements pursuant to the Judgment, or which would otherwise prevent the Rights being registered as easements in the event that the Appeal against paragraph (5) of the declaration made and set out below and the order for rectification made and set out in paragraph 1 below is dismissed.
- (c). they will not sell, transfer, charge, dispose of or otherwise deal with Block 12C Parcel 27 and Block 12D Parcel 108 or any interest therein unless the sale, transfer, charge, disposition, or dealing is made subject to, and any counterparty agrees and undertakes in writing (in form and substance satisfactory to the Second, Third, Fourth and Fifth Defendants or as approved by the Court or the Court of Appeal) to be bound by, the Rights as easements (in the event that the Appeal against paragraph (5) of the declaration made and set out below and the order for rectification made and set out in paragraph 1 below is dismissed).



IT IS DECLARED THAT:

Restrictive Agreements

- (1) Subject to the extinguishment of the Tennis Court Rights as ordered in paragraph 4 of the Order below, the Instruments include restrictive agreements within the meaning of and pursuant to section 93 of the Act, the restrictive agreement being: *“not to modify the facilities as constitute the Rights or their location or to suspend the exercise of the Rights for any purpose other than the purpose of carrying out repairs and maintenance in respect of such facilities”* (the **“Restrictive Agreements”**).
- (2) The Instruments were properly registered as, or as including, the Restrictive Agreements.
- (3) The Restrictive Agreements are binding on the Plaintiffs.
- (4) Nothing in the above declarations is intended to or does prejudice any arguments arising out of the registration gaps (if any) preserved by the order in paragraph 2 below.

Easements

- (5) Subject to the extinguishment of the Tennis Court Rights as ordered in paragraph 4 of the Order below, the Rights also constitute easements within the meaning of section 2 of the Act (the **“Easements”**).
- (6) The grant of the Easements has not been completed by proper registration of the same as easements in accordance with section 92(4) of the Act.
- (7) In the absence of rectification (as provided for by paragraph 1 of the Order below), the Easements would not be binding on the Plaintiffs.



AND IT IS ORDERED THAT:

Rectification

1. Pursuant to section 140 of the Act, that:
 - (a) All entries in the Incumbrances sections of the land registers for Blocks 12C Parcel 27 and 12D Parcel 108 in respect of the Rights be rectified as follows:
 - (i) By amending the descriptions of the 'Nature of Incumbrance' by the addition of "*Easements &*" before "*Restrictive Agreements*" (or any abbreviation thereof), so that the same read "*Easements & Restrictive Agreements*" (or any convenient abbreviation thereof);
 - (ii) By a sealed copy of this Order being filed with the First Defendant and allocated a convenient land registry reference number by her;
 - (iii) In the case of Block 12C Parcel 27, by amending the 'Further Particulars' given so as to read "*The Easements are the Beach Club Rights set out in the filed Instrument in favour of [dominant parcel number], and the Restrictive Agreement included in the said Instrument is that set out in Declaration (1) of the Grand Court Order made in FSD Cause 143 of 2019 dated2022, a sealed copy of which is filed under [allocated land registry reference number]*"; and
 - (iv) In the case of Block 12D Parcel 108, by amending the 'Further Particulars' given so as to read "*The Easements are the Golf Playing Rights set out in the filed Instrument in favour of [dominant parcel number], and the Restrictive Agreement included in the said Instrument is that set out in Declaration (1) of the Grand Court Order made in FSD Cause 143 of 2019 dated2022, a sealed copy of which is filed under [allocated land registry reference number]*"; and



- (b) In respect of each of the land registers for the Parcels listed at Schedule 2 appended hereto to amend the entry under 'Appurtenances' in the Property section relating to the Rights by the addition at its end (but before the Registrar's officer's initials) of the words "*(as to which facilities and rights see the Declarations in the Grand Court Order made in FSD Cause 143 of 2019 dated2022, a sealed copy of which is filed under [allocated land registry reference number])*";

and the parties and each of them are at liberty to apply in the event that more detailed directions in respect of such rectification shall be necessary.

2. For the avoidance of doubt, the rectification ordered by paragraph 1 of this Order shall not involve:
- (a) Adding references to additional Instrument numbers, where those Instruments are not currently registered against Blocks 12C Parcel 27 and 12D Parcel 108; or
- (b) Adding entries to the Appurtenances box in the Property section of the Parcels listed in Schedule 2 appended hereto, where there are currently no such entries relating to the Rights registered in favour of those Parcels.
3. Paragraph 1 of this Order will be stayed pending final determination of the Appeal.

Tennis Courts

4. Pursuant to section 96 of the Act, the Tennis Court Rights (as defined and contained in the Instruments) be and hereby are wholly extinguished.

Claims in the Re-Amended Originating Summons

5. Save as provided for by paragraph 4 above (tennis courts), the Plaintiffs' claims as set out in the Re-Amended Originating Summons sealed on 31st July 2019 are dismissed.



Counterclaims of the Walkers Defendants and of White Dove

6. There be Judgment for the Walkers Defendants and for White Dove for damages and interest thereon, both to be assessed, in respect of the nuisance to the easement constituting the Golf Playing Rights (as defined and contained in the Instruments) caused by the removal of turf (under paragraphs 20(a) and 24-25 of the Walkers Defendants' Amended Points of Counterclaim dated 2nd October 2020, and paragraphs 21(a) and 25-27 of White Dove's Points of Counterclaim dated 30th July 2019). The question of whether or not a declaration need and should be granted under paragraph (5) of the prayer for relief under the Walkers Defendants' Amended Points of Counterclaim dated 2nd October 2020 is reserved to such assessment.
7. The application by the Walkers Defendants for permission to re-amend their counterclaim to include allegations of interference with the so-called step-in rights is dismissed.
8. The remaining heads of the Walkers Defendants' and White Dove's counterclaims for damages and interest are dismissed.
9. The Plaintiffs on the one hand and the Second Defendant, the Third Defendant, the Fourth Defendant and the Fifth Defendant on the other have permission to rely upon the written report of one expert in the field of golf course management in respect of the issue of the quantum of the costs of the work required to replace the turf removed by the Plaintiffs and to restore the area from which the turf was removed and to replace turf in and to restore any areas adjacent thereto on the golf course which were damaged by reason of such removal of turf or whose repair is otherwise needed so as to make the affected areas and parts of the golf course playable again (to the extent required in order to allow the Second, Third, Fourth and Fifth Defendants to exercise their Golf Playing Rights).



10. The said counterclaims in respect of the removal of turf shall be stayed for a period of 1 month from the date of this Order, during which time the parties shall use reasonable endeavours to reach agreement settling the same. If a settlement thereof is reached, the Walkers Defendants' Attorneys must promptly notify the Court (copied to the other parties) thereof.
11. In the absence of any settlement of the said counterclaims, the parties shall simultaneously exchange such expert reports by 4pm on the date 4 weeks after the date on which the Court of Appeal hands down its judgment on the Appeal.
12. The said counterclaims in respect of the removal of turf shall thereafter again be stayed for a further period of 2 months, during which time the parties are again to use reasonable endeavours to reach agreement settling the same.
13. By 4pm on the date on which the said 2 month stay expires, the Walkers Defendants' Attorneys must notify the Court (copied to the other parties) whether the said counterclaims have been settled, and if not request the listing of a directions hearing for consideration of what further directions are necessary in relation to the assessment of damages and interest under paragraph 6 above, and the determination of whether or not a declaration need and should be granted under paragraph (5) of the prayer for relief under the Walkers Defendants' Amended Points of Counterclaim dated 2nd October 2020.

Third Party Claims

14. The Third Party Notices by (a) the Walkers Defendants sealed on 30th July 2019 and (b) White Dove sealed on 1st August 2019 shall remain stayed, but with liberty to each of the Walkers Defendants, White Dove and the First Defendant to apply to restore.

Costs



15. In respect of costs:

- (a) The costs of and incidental to the Summons of the Walkers Defendants dated 27th March 2019 (including the discontinuance of claims against the Britannia Estates Home Owners Association Limited ("**BEHOAL**")) and the consent orders made on 18th March 2020 and 17th June 2020 shall be costs in the Cause;
- (b) The Walkers Defendants shall pay the Plaintiffs' costs of and incidental to the Walkers Defendants' application to re-amend the counterclaim made on 14 December 2020, to be taxed on the standard basis if not agreed;
- (c) Subject to paragraphs 15(a) and (b) above, the Plaintiffs shall pay 80% of the Walkers Defendants' and White Dove's costs of and incidental to the claim, to be taxed on the standard basis if not agreed;
- (d) Subject to paragraphs 15(a) and (b) above, the Plaintiffs shall pay 20% of the Walkers Defendants' and White Dove's costs of and incidental to the counterclaim, to be taxed on the standard basis if not agreed;
- (e) Pursuant to GCR O.62, r.4(7)(g), the Plaintiffs shall pay interest on the Walkers Defendants' taxed costs calculated at the rate of 2.375% from the date upon which they were paid by the Walkers Defendants;
- (f) Pursuant to GCR O.62, r.4(7)(h), the Plaintiffs shall pay the sum of US\$420,000 to the Walkers Defendants on account of such costs, such sum to be paid by 4pm on [21 days after the date of this Order].
- (g) The Plaintiffs shall pay BEHOAL's costs of the Plaintiffs' claim against that entity, to be taxed on the standard basis if not agreed;
- (h) The Plaintiffs shall pay the First Defendant's costs of the claim, to be taxed on the standard basis if not agreed; and

- (i) By consent, the taxations above shall be stayed pending final determination of the Appeal.

DATED the 28 day of January 2022

FILED the 28 day of January 2022

A handwritten signature in blue ink, appearing to read 'Segal', is centered on the page. The signature is fluid and cursive.

The Honourable Justice Segal
JUDGE OF THE GRAND COURT

THIS ORDER was filed by Walkers, Attorneys-at-Law for the Second, Third and Fourth Defendants and parties 5-8, 11-23 and 25 of the compendious Fifth Defendant whose address for service is that of its said attorneys, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands