

IN THE SUPREME COURT OF BELIZE, A. D. 2015

CLAIM NO. 11 of 2011

(THE PROPRIETORS OF STRATA PLAN NO. 49 CLAIMANT
(
BETWEEN (AND
(
(MOUNTEER INVESTMENTS LIMITED DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Ms. Pricilla Banner of Courtenay Coye LLP for the Claimant

Mr. Ernest Staine for the Defendant

D E C I S I O N

1. The Facts

This is a claim for judgment in the sum of BZ \$14,774.30 plus interest owed by the Defendant, Munteer Investments Ltd. (Munteer), to the Claimant, the Proprietors of Strata Plan No. 49 (PSP 49), for strata fees, late fees, assessments, and utility expenses together with interest on the sum owed for the period February 1st, 2010 to January 1st, 2011. The Claimants also seek a declaration for enforcement of judgment thru an order for sale of the

unit. Munteer argues that it does not owe the Claimant the amount claimed, or any amount at all.

2. PSP No. 49 states that Munteer purchased Unit No. 10 Miramar Villas, Ambergris Caye in April 2008 and that Munteer agreed to abide by the bylaws as stated in the Strata Act.

Invoices were sent by PSP No. 49 to Ms. Faye Munteer on behalf of the Company on a quarterly basis stating the duly approved fees to be paid by each individual unit owner per quarter. On numerous occasions between 2008 and 2011, PSP No. 49 claims that it informed Ms. Munteer that the Defendant Company had routinely paid less than the fees assessed for Unit 10 and was therefore in arrears.

3. PSP No. 49 sent a letter to Munteer notifying it of an outstanding debt in the sum of \$5,466.38 as at 22nd February, 2011 for strata fees and assessments. Munteer refused to pay the amount claimed. PSP No. 49 therefore commenced proceedings against Munteer Investments Ltd. on February 28th, 2011. The arrears owed by Munteer accrued to \$9,102.60 as stated in the witness statement of Rosa LaRosa, on behalf of the Claimant,

as of March 14th, 2013. At the trial of this matter in 2014, the witness testified that the arrears are now BZ\$14,774.30.

4. At trial, at the conclusion of the evidence of the Claimant on November 11th, 2014, the Defendant's attorney Mr. Staine informed the court that the Defence would lead no evidence to rebut the claim. The only evidence before this Court is therefore the evidence of the Claimant.

5. **The Issues**

Is the Claimant entitled to the sum claimed, or any part thereof?

6. **The Claimants' Submissions**

Ms. Banner on behalf of PSP No. 49 argues that the undisputed evidence of the Claimant shows that Munteer Investments Ltd. is the proprietor of a strata lot as evidenced in the land register for unit 10. This is Exhibit JK1 attached to the witness statement of Jennifer Koechle. There is no question that Munteer Investments Ltd. covenanted to pay such assessments when invoiced by PSP No. 49.

She further submits that Munteer paid funds towards the sums invoiced from time to time by the Claimant, making unilateral and arbitrary partial payments towards the total sums invoiced for the period 2010 to 2013 and

in 2013 making full payment for the sums invoiced. Ms. Banner states that there is no explanation by Munteer for the reason for this change in position, but that this change does indicate that Munteer's objection to payment is groundless.

She argues that the evidence led at trial clearly shows that the Annual General Meetings were duly held each year in San Pedro, Ambergris Caye, Belize; that Annual Budgets were approved at the Annual General Meetings by the proprietors; invoices were issued to the Defendant in respect of fees and assessment owed to the Claimant; the Defendant repeatedly made payments to these invoices but failed to pay the complete invoices issued; and the Defendant now owes the sum of BZ \$14,774.30 to the Claimant as at date of trial. As the Defendant has chosen not to provide any evidence to rebut that presented by the Claimant, it must be taken that the Defendant does not wish to dispute that evidence. Ms. Banner therefore submits that the Defence is unsubstantiated and unmeritorious, and the Claimant is entitled to the sum of \$14,774.30 as at April 7th, 2014 (as per testimony of Ms. LaRosa) plus interest accrued since that time.

7. The Defence's Submissions

Mr. Staine argues that it was incumbent on the Claimants to prove:

- 1) It is a legal person; since it is not a biological person, that it has the capacity to sue
- 2) Proper instructions were given to Jennifer Koechle to act on its behalf
- 3) It acted under laws relative to it
- 4) Produce proof of meetings and actions taken therein
- 5) Prove the legal existence of the Home Owners Association
- 6) Prove that assessments are fairly and properly done

Learned Counsel submits that the Claim must fail because the Claimant has not provided any evidence to substantiate the six points raised above. In sum, he argues that the court has absolutely no proof of ownership by the owners of the units, nor their attendance at meetings, nor of decisions taken at the meetings. He argues that there is no legal authority for a strata corporation to hold meetings by email. There were no proper meetings held and the provisions for administration of a strata corporation were never complied with. Jenny Koechle volunteering to act as Chairperson (not elected) and others confirming by email meetings is not good enough to satisfy the law. He also argues that Jenny Koechle has no authority to represent the Claimants. There were no Minutes of Meeting presented to

this court containing a resolution authorising her to represent PSP No. 49 in this matter. He submits that there must be authorisation in writing as stated in section 6 of the Strata Act. In addition, there was no Sale Agreement in evidence which would show who are the actual owners of the units. He states that the failure to put that document into evidence implies, e.g., that Casa Sombrero Ltd. is still registered as the owner of Unit 1 and that Barbara Anderson was not entitled to vote on behalf of Unit 1 at any of the meetings held. Mr. Staine challenges each of the proprietors mentioned by Jenny Koechle in her testimony and states that the Claimants have failed to produce any written document authorising these individuals to vote at meetings, since the titles to the strata lots are in the names of companies, not in the name of those individuals named in the minutes of the Home Owners Association meetings.

Mr. Staine further argues that the Home Owners Association which was formed to manage Proprietors Strata Plan No. 49 (including the by-laws made by this entity) is illegal. He submits that the Strata Act provides for management of a strata corporation by an Executive Committee (section 13 Schedule 1) and since the law does not recognize the right to delegate, a Home Owners Association cannot manage a corporation. Section 15(2) of the

Strata Act is to apply and could not be amended or varied except by unanimous resolution. To form a Home Owners Association and use it as a means to subvert the law is illegal. It is also wrong to amend the 2nd Schedule which does not require a unanimous vote to include therein matters which should rightly be part of the 1st Schedule. In conclusion, Mr. Staine states that his client wishes to urge upon this court that an Administrator be appointed to bring the affairs of the Claimant Corporation in order and guide all parties on the way forward, as provided in section 9(2) of the Strata Act.

8. **Decision**

Part V of the Strata Titles Registration Act, Chapter 196 of the Laws of Belize, addresses the main matter which is at issue in this case: Management and Administration of strata lots.

“Section 15(1) Subject to the provisions of this Act, the control, management, administration, use and enjoyment of the strata lots and the common property contained in every registered strata plan shall be regulated by by-laws.

(2) The by-laws shall include-

(a) the bylaws set out in the First Schedule, which shall not be amended or varied except by unanimous resolution;

(b) the bylaws set forth in the Second Schedule, which may be amended or varied by the Corporation;

(3) Until bylaws are made by a Corporation in that behalf, the by-laws set forth in the First Schedule and the Second Schedule shall, as and from the registration of a strata plan, be in force for all purposes in relation to the relevant parcel and the strata lots and common property therein.

*(5) No amendment or variation of any bylaw shall have effect **until** the relevant Corporation has lodged with the Registrar, a notification thereof in such form as may be prescribed **and** until the Registrar notifies the Corporation that he has made reference thereto on the relevant registered strata plan.” (emphasis mine)*

The matters contained in the First Schedule are very detailed guidelines designed to enable the corporation to efficiently and effectively govern the strata plan until it can develop its own by laws. The scope of these regulations range from the rights and responsibilities of individual proprietors (payment of taxes and rates, repair and maintenance of strata lots, notification of change of ownership) to duties and powers of the Corporation (control and administration of the common property, borrowing money for the performance of its duties, securing repayment of monies borrowed). The bylaws also set out provisions governing the holding of

general meetings by the Corporation, the election, powers and duties of the Executive Committee, and the procedure for Voting by proprietors.

By comparison, the matters addressed in the Second Schedule appear sparse, limited to specific prohibitions of proprietors e.g. regulations against using one's strata lot for any purpose which may be illegal or injurious to the reputation of the building and regulations against making undue noise and against keeping animals on one's strata lot.

It is clear that the legislature intended to safeguard the importance of by-laws contained in the First Schedule by ensuring that that particular schedule could only be changed by a unanimous resolution of the Corporation. Parliament has gone further and ensured in Section 15, that any amendment or variation of any of those by laws must be done by a two stage process 1) lodging the amendment or variation with the Registrar; and 2) notification by the Registrar to the Corporation that he has made reference to those amendments on the relevant registered strata plan.

The First Schedule (bylaws under the Strata Title Act) empowers the Executive Committee of the Corporation in section 19 to decide matters of administration by a simple majority. I find that procedure to establish the

Executive Committee was carried out by the proprietors in accordance with the bylaws which were in effect at that time, i.e., the bylaws in the First Schedule to the Strata Act. The Minutes of June 20th, 2008 reflect that seven out of the ten owners voted in person or by proxy in favour of establishing the Executive Committee and Jenny Koechle was duly elected as Chairperson in keeping with the provisions of sections 13 to 19 of the First Schedule. However, the Minutes of the Meeting of the Executive Committee of PSP No. 49 dated October 20th, 2008 clearly show that the vote to adopt the bylaws passed by nine votes in favour of approving the amended bylaws. There are 10 units and 10 possible votes; the Defendant's absence as the owner of Unit 10 was duly noted in the Minutes of that Meeting. Mr. Staine in cross examination and in his written submissions has also challenged the voting of other proprietors at this meeting on the basis that a number of the persons who voted were not the persons whose names appear on the certificates of title to the strata lots (which were in many cases in the names of companies).

Regulation 30 of the bylaws in the First Schedule states:

*“Except in cases where by or under this Act a **unanimous resolution** is required, no proprietor shall be entitled to vote at*

any general meeting unless all contributions payable in respect of his strata lot have been duly paid.” (emphasis mine)

This section clearly prohibits proprietors such as Faye Mounteer/Mounteer Investments from voting in general meetings where the proprietor is not in good standing with the Corporation, e.g., where the strata fees have not been paid, **except in cases where the resolution must be unanimous**. A unanimous resolution is defined in section 2 as *“a resolution unanimously passed at a duly convened meeting of a Corporation at which all persons entitled to exercise the power of voting conferred by or under this Act are present personally or by proxy at the time of the motion.”* In those cases which require unanimous resolution under the parent Act, e.g., where the Corporation wants to amend bylaws under section 15, a proprietor will still be allowed to vote **even when he or she has not paid strata fees**. This underscores the importance placed by Parliament on the Corporation obtaining every single proprietor’s vote on certain specific matters such as amendment of bylaws (section (5), variation of insurance (section (6) and restrictive covenants and easements (section (16), inter alia.

I find on the evidence of the Claimant itself that the resolution to adopt these new bylaws in June 2008 was not unanimous as required by the Strata Act.

The bylaws have been registered by the Claimant, but I agree with Mr. Staine that those bylaws are not legal and are not valid as they were not passed in keeping with section 15 of the Strata Titles Registration Act. All fees which PSP No. 49 sought to collect pursuant to those new by laws are therefore not valid. I also agree with Mr. Staine's submission that the Corporation's attempt to circumvent the requirements of the parent Act, by amending the Second Schedule to include substantial regulations (governing maintenance, architectural control, insurance and assessments, inter alia) which clearly belong in the First Schedule (which require unanimous resolution of ALL proprietors) is disingenuous and should not be tolerated or encouraged by the Court. The success or failure of a Corporation such as PSP No. 49 depends on the agreement among its unit owners especially with respect to shared rights and responsibilities governing the manner in which the administration and management of the enterprise will be carried out. Parliament therefore saw it fit to protect the rights of **all** proprietors by these provisions, even the rights of those such as Ms. Mounter/Mounter Investments Ltd. who may appear to PSP No. 49 to be troublemakers or nitpickers. I therefore rule in favour of the Defendant.

Ms. Banner made the point that the Defendant is bound to pay the fees assessed once she became the owner of the strata lot. I would venture to say Learned Counsel is quite right and I would say that the evidence bears out that the Defendant agreed with her on this point, as PSP No. 49 had very little difficulty collecting fees from Mounteer Investments Ltd. under the old default bylaws up to 2008. The major problems arose when PSP No. 49 sought to impose fees and assessments arising from the new bylaws in June 2008 and the evidence shows in email exchanges between the Claimant and the Defendant that Ms. Mounteer and her company protested (rightly in my respectful view) on the basis that she never agreed to these new bylaws, changing the bylaws require unanimous resolution under the Strata Title Registration Act, and those fees are therefore illegal.

I have noted that Ms. Mounteer has repeatedly said (through her attorney) that she would like the affairs of the Corporation investigated to determine the basis on which the quantum of fees has been assessed. In light of my decision in favour of the Defendant, I will also order that an independent

administrator be appointed pursuant to section 9(2) of the Strata Titles Registration Act to assess quantum of the fees charged and payable by the Defendant to PSP No. 49. I set 6th July, 2015 as the date for the parties to return to court for further directions on the appointment of an administrator.

The Claim is dismissed.

Costs awarded to the Defendant to be paid by the Claimant to be taxed and agreed.

Dated this 19th day of June, 2015

Michelle Arana
Supreme Court Judge