

**IN THE SUPREME COURT OF BELIZE, A.D. 2018**

**CLAIM NO. 667 of 2017**

**JAMES JANMOHAMED**

**CLAIMANT**

**AND**

**THE PROPRIETORS OF STRATA  
PLAN NO. 10**

**DEFENDANT**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

2018

31<sup>st</sup> July

20<sup>th</sup> September

Written Submissions

Claimant – 27<sup>th</sup> September, 2018

Defendant – 16<sup>th</sup> October, 2018

Decision

15<sup>th</sup> January, 2019

Mr. Kareem Musa for the Claimant.

Mr. Estevan Perera for the Defendant.

**Keywords: Real Property – Strata Title – Amendment to Strata Plan- Phased  
Strata Plan – Common Property – Building – Destruction of Building – The  
Strata Titles Registration Act Cap 196 – Regulations to the Strata Act – The  
Registered Land Act Cap 194**

**JUDGMENT**

1. A series of unfortunate events or a series of unfortunate errors? James Janmohamed is the developer of a strata scheme in the naturally beautiful islet of San Pedro. He says it was always his intention to have a phased development. However, when he received the first registration of Strata Plan no. 10 (No.10) on Parcel 3841, the Strata Titles Act (the Act) made no provision for phased developments. The Act did empower the Minister of Lands, by virtue of section 18(b), to make regulations to amend a strata plan. Regulation 7 of the Regulations to the Act (the Regulations) authorized the Registrar to make changes in registered strata plans.
2. Mr. Janmohamed, eventually, secured an amendment to No. 10 which effectively approved and allowed his second phase of continuing development. This approval came only after he had built additional strata buildings beyond those which appeared in the original strata plan.
3. By a subsequent amendment to the Regulations, phased developments became a reality. Mr. Janmohamed then sought to use this to his advantage. He, accordingly, made application for No. 10 to be further amended to include two additional phases. He filed an amended plan showing the new phases for which no buildings had as yet been built. He says he received the requisite approval through the registration of this amended plan and new registers were accordingly opened for each new strata unit by the Registrar of Lands. No. 10 was also mutated into four pieces (3841A – D) pursuant to section 25 of the Registered Land Act. It is this second amendment which brings us to this place.
4. Part of that second amendment envisaged the construction of two strata buildings on what the Proprietors of No. 10 (the Proprietors) say is their

common property. Mr. Janmohamed says such a claim is preposterous since he is the owner of the piece of property. He had always intended to expand the development and the Proprietors were well aware of this. He had even constructed a building on that piece of property which he used as an office, restaurant and bar.

5. Somehow, the Proprietors had taken over this building and begun to use it without his permission. They refer to it as the administration building and for ease of reference and nothing more, this judgment will adopt the same nomenclature. It is the administration building which Mr. Janmohamed intends to demolish so that the proposed two new strata buildings could rise from its ruins.
6. He pleads, further, that it cannot now be found in the mouths of the Proprietors to deny any of this because No. 10 had been formally amended by the Registrar of Lands based on a “no objection” letter from the Proprietors’ Corporation. He prays the Court for possession of the said building, a declaration that the Proprietors are not entitled to enter, use or occupy the building; an injunction restraining them from doing so and damages for trespass and loss of sales of ten condominiums with interest and costs.
7. The Proprietors say not only do they own the administration building but they have been in possession of it for more than twelve years (since 2005). His claim for possession is therefore statute barred. Moreover, his claims for loss are wholly unsubstantiated. They counterclaim that pursuant to the Act the purported amendments to No. 10 are void and/or illegal since a

resolution confirming the approval of all strata owners had not been secured as is required by the Act.

8. They add that Mr. Janmohamed is not entitled to destroy the building without the unanimous consent of all the owners. They seek a declaration in this regard as well as for the ownership of Parcel No. 3841, Block 7 comprised of the common property and a permanent injunction restraining Mr. Janmohamed from destroying the building. In the alternative a declaration that the Claimant cannot alter or amend the existing strata Plan No. 10 without first acquiring the consent of all the strata title owners within the development.
9. The underlying facts as they relate to the registration of No. 10 and the subsequent purported amendments to the Strata Plan were never in contention. The Court therefore decided to deal firstly with the claim for possession of the administration building only. The Court heard only one witness the Registrar of Land in relation to the sole real issue:
  - (1) Whether the administration building forms part of the common property belonging to the Proprietors.
10. Before going any further it may be best to outline the relevant sections of the Act and the Regulations. I apologise early for the length of what I consider to be a necessary inclusion.

*2. In this Act, unless the context otherwise requires:-*

*“building” means the building or buildings shown in a strata plan.*

*“common Property” means in relation to any strata plan, so much of the land to which such plan relates as is for the time being not included in any strata lot contained in such plan.*

*“strata” has reference to titles to the ownership of not less than two self-contained*

*units for residential or business purposes being either detached buildings or divisions or subdivisions of one or more buildings, which units may be divided horizontally or vertically from, and may have a common roof and common foundations with, one or more other such units and may share the use of service buildings and other facilities in common, the whole being located on a single parcel of land and under the management of a Corporation established under this Act*

*“Strata Lot” means a self-contained unit comprised in a strata plan and shown in that plan as a strata lot.*

*“Strata Plan” means a plan of the type referred to in section 4.*

*“Unit Entitlement” means in relation to any strata lot, the number specified in accordance with paragraph (d) of sub-section (1) of section 4.*

*“4.-(1) Every strata plan shall-*

*(a) state the full reference of the parcel and be described as a strata plan;*

*(b) delineate the boundaries of the parcel and the location of the building or buildings in relation thereto;*

*(c) include such elevations, sections, plans, diagrams and other information as shall be sufficient to-*

*(i) illustrate the strata lots and distinguish each lot by a number;*

*(ii) define the boundaries of each strata lot in the building or buildings by reference to floor, walls and ceilings; provided, however, that it shall not be necessary to show any bearings or dimensions of the strata lots; and*

*(iii) specify the approximate floor area of each strata lot;*

*(d) have endorsed upon it a schedule setting out the unit entitlement of each strata lot indicating as a whole number the proportion of the common property allocated to that strata lot;*

*(e) have endorsed upon it the address at which documents may be served upon the Appeal Corporation;*

*(f) contain such other particulars, and may be accompanied by such certificates and other documents, as may be prescribed.*

*(2) The reference of the parcel and the number of the strata lot shall together be a sufficient reference to a strata lot.*

*(3) The common boundary between any two strata lots or between a strata lot and common property shall, unless otherwise specified in the relevant strata plan, be the centre line of the floor, wall, or ceiling between such strata lots or between such strata lot and the common property, as the case may be.*

*(4) The unit entitlement of each strata lot shall, as respects the proprietor*

*of such strata lot, determine-*

- (a) the quantum of his share in the relevant Corporation; and*
- (b) the proportion payable by him of contributions levied pursuant to paragraph (b) of subsection (2) of section 6; and*
- (c) the proportion of land tax and/or property tax payable by him, whether jointly or severally, pursuant to this Act.*

*Registration and Dealings*

*10. If the Registrar is satisfied that an application for registration of a strata plan is in order he shall-*

- (a) file the strata plan;*
- (b) open a new register in respect of each strata lot shown on the strata plan in accordance with section 11;*
- (c) in respect of the register relating to the parcel-*
  - (i) record in the property section that the land comprised consists only of the common property;*
  - (ii) in the proprietorship section, delete the name of the proprietor, substitute the name of the strata lot Corporation established under section 5 (and enter a restriction prohibiting any dealings with the land otherwise than by order of the court or of the Registrar);*
  - (iii) note in the encumbrance section that registers in respect of the strata lots have been opened.*

*11.-(1) The registers opened by the Registrar in accordance with section 10 in respect of each strata lot in a parcel shall record-*

- (a) all the particulars recorded in the property section of the register relating to the parcel in question and including the unit entitlement of the strata lot in question;*
- (b) the proprietor of the parcel as the first proprietor of the strata lot; and*
- (c) the encumbrances noted in the encumbrances section of the register relating to the parcel:*

*Provided that if the Registrar is satisfied that any of such particulars or encumbrances do not apply to the strata lot he shall omit them from the register relating Strata lot registers relating to the strata lot and record the reason for his decision.*

*(2) A strata lot shall be deemed-*

- (a) for the purposes of sections 26 and 27 of the Registered Land Act, to be a parcel; and*
- (b) for all purposes of this Act, to be land.*

*13.-(1) The common property shall be held by the members as proprietors in common in shares proportionate to the unit entitlement of their respective strata lots.*

*(2) The Registrar shall, in making out a land certificate for any strata lot, certify therein the proprietor's share in the common property.*

*(3) Save as is provided in this Act, no share in the common property shall be disposed of except as appurtenant to a strata lot and any assurance of a strata lot shall operate to assure the share of the disposing party in the common property without express reference thereto."*

*"14.-(1) The proprietors may by unanimous resolution direct their Corporation to transfer or lease the common property or any part thereof.*

*(2) If a Corporation is satisfied that the resolution was duly passed and that all persons having interests, of which the Corporation has notice, in the parcel have consented in writing to the release of those interests in the land comprised in the proposed transfer or lease or, in the case of a lease, having approved in writing of the execution of the lease, the Corporation shall execute the appropriate transfer or lease and such transfer or lease shall be valid and effective without execution by any person having an interest in the common property, and the receipt of the Corporation for the purchase money, rent or other money payable to the Corporation under the terms of the transfer or lease shall be a sufficient discharge and shall exonerate all persons taking under the transfer, or the lease, as the case may be, from any responsibility for the application of the moneys expressed to have been received.*

*(3) Every such transfer or lease lodged for registration shall be endorsed with or accompanied by a certificate under the seal of the Corporation that the resolution referred to in subsection (1) was duly passed, that the transfer or lease conforms with the terms thereof and that all necessary consents were given and such certificate shall, in favour of purchasers of the common property and in favour of the Registrar, be conclusive evidence of the facts stated therein."*

## **Whether the administration building forms part of the common property belonging to the Proprietors:**

### **The Regime:**

11. Strata title or ownership is a special land holding arrangement which allows the subdivision of a building so that multiple owners could own separate parts (units) as they could ordinarily own parcels of land. This is combined with the unit proprietors' collective ownership (in common) of the residue of the estate or the common property. Strata title is a statutory construct which simply did not exist prior to the passing of the Act. This means that the rights of owners are as created and defined by the Act. The Act, before

amendment, outlined only one process through which such a development could be created – the registration of a strata plan.

12. All strata schemes are to be represented by a strata plan. The developer is required to present this strata plan and the relevant documents (as outlined in the Regulations) to the Land Registry. Once processed and approved by the Registrar of Lands, the plan is placed on the public record (filed) and new registers are opened for each strata lot shown on that plan. A lot, here, is really each self-contained unit shown on the strata plan.
13. This registration process elevates each lot, with its stated corresponding portion of the common property, into a fee simple. So that a proprietor is able to deal with a strata lot and its appurtenant piece of the common property, as he would a parcel of land under the Registered Land Act. He has all the attendant rights but holds subject to any interests affecting his lot or share in the common property and any amendments made to the strata lots or common property noted or shown on the registered strata plan. Only registered land is amenable although plans may be lodged and preparatory work undertaken for its registration prior to the land being brought under the Registered Land Act.
14. Before the amendment to the Regulations, the parcel on which a strata development sits was divided into two distinct sections only - strata building(s) and common property. On registration of a strata plan, so much of the land, to which the plan relates, which, for the time being, was not a strata building, automatically formed part of the common property. The entire development must be located on a single parcel of land under the



management of a Corporation established under the Act (see the definition of strata under section 2 (above) of the Act).

15. This Court is of the view that a parcel here is as defined in section 2 of the Registered Land Act. It is an area of land separately delineated on the registry map and given a number. Section 4 (1) (a) and (b) of the Act supports this view as it requires that the full reference of the parcel must be stated and its boundaries delineated. The Act expands this definition only so far as to include a single parcel that has been subdivided in accordance with a registered strata plan. This Court is again of the view that the subdivision referred to here is the subdivision of the parcel into strata lots and nothing more. Section 3(1) says quite plainly that “*Land may be subdivided into strata lots in accordance with a strata plan...*” Regulation 18 allows for the same kind of subdivision to be done in phases. There are no other provisions whether under the Act or the Regulations that allow for a subdivision of any other kind.
  
16. That common property is to be divided proportionately with the proprietor’s unit size so that each proprietor would be entitled to a portion of the common property. The floor area of each unit is to be stated on the strata plan (section 4(1)(c)(iii)). But the information as to the size of the corresponding portion of the common property is to be provided to the Registrar through the proper completion of Form 2, under the heading ‘Unit Entitlement’. There can be no doubt about this since unit entitlement, as defined by the Act, means the actual size of the portion of the common property, allocated to each strata lot, specified as a whole number (see sections 2 and 4(1)(d)). The Registrar is then required to endorse both the

unit size and the unit entitlement on each register (section 11) and each certificate of title (section 13 (2)). This is determinative of the quantum of an owner's share, his levied dues and land tax contributions.

17. On the registration of a strata development, the Registrar must remove the owner's name from the register relating to the parcel and replace it with the name of the strata lot Corporation. The Registrar must also record in the property section of the register relating to the parcel that the land comprised consists only of common property and that new registers for each strata lot have been opened (section 10 (c) (i) and (iii)). This is all significant because it gives ownership of the common property to the Corporation.
18. All the registered proprietors form the Corporation which is a body corporate with perpetual succession. All unit owners are voting members of the Corporation. The Corporation's duties are outlined in the Act. Basically, it has the responsibility for making decisions that benefit the building and caring for the common property.
19. The Registrar must then lodge a restriction order prohibiting any dealing with the common property without further order of either the Registrar or the Court. This effectively restricts the power of the Corporation to deal with the common property in any way which is inconsistent with what is permitted by the Act.
20. Each opened register for each strata lot must reflect the name of the original proprietor of the parcel as the first proprietor. It must also record the unit entitlement of the particular strata lot. From the moment a lot is sold, it is registered in the purchaser's name and a certificate of title is issued giving

ownership to the individual lot and indicating the corresponding portion of the common property as well.

**Phasing:**

21. There was no process provided for phasing until the Regulations were amended in 2003. According to section 18 of the Strata Titles Registration Regulations, a development could be phased according to land or building. To effect a phased strata development three plans must be registered in succession. First there is the Proposed Strata Lot Development Plan, followed by the Phase Strata Plans and finally, the Complete Strata Plans.
22. To appreciate the process it is important to understand each of these three documents as they have been characterized by the Regulations. A proposed strata lot development plan depicts every strata lot and the entire common property which is proposed to be included in the entire development. This is the blue print for the development. The building or buildings are not shown as having been completed, but they and the common areas are all detailed. Regulation 15 describes it only as a “*plan*” never as a strata plan because it is certainly not a strata plan as defined by the Act. Its registration allows for the phasing of a strata development and nothing more. However, the development on the phase strata plans and the complete strata plans must be identical to the proposed strata development plan. In order to make any changes, a further proposed strata lot development plan must be registered.
23. Then there is the phase strata plan which must conform to the requirements of a section 4 strata plan. Noticeably, unlike the proposed strata lot development plan, it is referred to as a “*strata plan*”. This, therefore, necessitates that a strata building or buildings must have already been

completed with common property defined. The entitlement of each strata lot to a portion of the common property (unit entitlement) must also have been calculated and endorsed. Additionally, the development works must have reached such a state of completeness that the boundaries of each unit and of the common property could be physically measured. Unlike an ordinary strata plan, however, any area on that plan which is proposed to be developed at a later phase must be designated as a future development strata lot.

24. It is important to note here that according to Regulation 19(1)(a) a proposed strata lot development must not be registered unless it is accompanied by a phase strata plan in respect of the same development. This means that any registration of a proposed development plan, where no part of the development has already been constructed, is plainly wrong.
25. Finally, a complete strata plan is to be filed (note again the use of the term “*strata plan*”). It shows all the completed buildings and common property only. It must not be overlooked that Regulation 2(2) provides that words and expressions in the Regulations have the same meaning assigned to them in the Act. Building has a specific meaning under the Act. It does not include a proposed building and refers only to buildings shown in a strata plan. This means that the building must be an existing strata building. Therein lies the subtle difference between a complete strata plan and a proposed strata lot development plan. This view is supported by Regulation 20(2) which distinguishes the various strata plans from the proposed development plan by providing that: “*On each phase strata plan (including the first), and on the complete strata plan, the unit entitlement to be assigned to each strata*

*lot shall be that shown on the proposed strata lot development plan in respect of that strata lot,”*

26. The developer must ensure that the first phase functions as if the lots and common area were the only development included in the strata plan. As the development progresses, each subsequent phase merges with the original and together they must operate as if the development is complete. With each merger or registration of a subsequent phase strata plan, the complete strata plan changes and the latest version is simply substituted for the previous. To my mind this means that there could be no ‘amendment’ to any phase without the registration of a further proposed strata lot development plan.
27. It also means that no mutation of the single parcel is required. The mutation of parcel 3841 into four parcels disturbs me greatly. While appreciating that a strata development can only exist on a single parcel of land, this Court cannot fathom why it was done or how it was done. One cannot but quietly wonder whether the requirements of Section 25 of the Registered Land Act had even been met. But I digress.
28. This Court agrees with counsel for the Defendant that even after the proposed strata lot development plan is registered, an application must be made for registration of each phase strata plan. It is through this process that the Registrar satisfies herself that the phase strata plan meets the requirements of section 4 of the Act, is in full alignment with the proposed strata lot development plan and more importantly that the requirements of the particular certifications etc., prescribed by section 4(1)(f) have been provided. There is simply no other way. The Registrar does not somehow lose, and she cannot somehow abdicate, her role of ensuring that the phase

strata plan is in order by virtue of the registration of the proposed strata lot development plan only.

29. I am strengthened in this view, firstly, by Regulation 18 where there is an expressed reference to the phase strata plan satisfying the requirements of section 4. But even more persuasive is Regulation 21 which makes it pellucid that: *“The other provisions of the Act shall apply in respect of*

*(a) ...*

*(b) Phase strata plans and complete strata plans.”*

This must surely include section 10 where the Registrar’s function on receipt and approval of the application for registration of a strata plan are outlined.

30. Let us be clear, a proposed strata lot development plan, upon registration, does not confer the rights and entitlement of a strata lot because no strata lot is created until the phase strata plan is registered. The phase strata plan is in most ways the equivalent of the strata plan as set out in section 4 of the Act. If we consider section 3(2) and (3) we can then appreciate the effect of registration of a strata plan or a phased strata plan.

3.-(2) When a strata plan has been so registered, any strata lot included therein may devolve or be dealt with in the same manner and form as land under the operation of the Registered Land Act.

(3) A strata plan shall, for the purposes of the Registered Land Act, be deemed upon registration to be embodied in the register kept under that Act; and notwithstanding the provisions of that Act, the proprietor of each strata lot shall hold such strata lot and his share in the common property subject to-

*(a) any interests affecting such strata lot or such share; and*

*(b) any amendments to strata lots or common property, creation of strata lots, notified, or shown, as the case may require, on the registered strata plan.*

31. Further, it is only on the registration of the strata plan or phase strata plan that the Registrar is empowered through section 10 to open a new register in

respect of each strata lot shown on the plan. Should she open a register prior to registration she has certainly acted without due authority. But the Registrar is no party to this claim. While the Regulations do not outline how the original parcel is to be registered where the development is phased, one thing is clear. The original proprietor continues to be the proprietor of every future development strata lot (see Regulation 19(3)(a)). This means that the future strata lots do not form part of the common property. So even if the original registration process is followed, they are not transferred to the Corporation as the common property is. Once the construction has been completed and the new phased strata plan filed, the new registers ought to show the original proprietor as the owner. This allows him to deal with those lots as he would a separate parcel of registered land.

**Transitioning from strata development to phased strata development:**

32. What continues to concern the Court however is that there are no transitional procedures in the regulations. This makes the process of migrating from a strata plan to a phased strata plan fairly '*uncertain*' if not impossible. For instance can a proposed strata lot development plan simply be registered or is the phase strata lot development plan to be considered a further proposed strata lot development plan requiring the consent of a majority of the proprietors of strata lots. Can a developer who is no longer the registered owner make such an application? If the Corporation is not the developer, does the common area have to be transferred by the Corporation; such transfer not to be registered without the Corporation's certificate under seal evidencing that the unanimous resolution of the proprietors had been passed to release interests in the land (section 14)?

33. Because there is no transition provision outlined, it appears to me that the amendment to the Regulations really only contemplates a development which initially begins as phased. The original proprietor/developer would therefore not need the Corporation's consent since there would be no corporation in existence and no interference or potential interference with the rights of its members. Where a developer wishes to change the initial strata plan to a proposed strata lot development plan, the proprietors will most definitely be affected.

**Amendments to No.10:**

34. When No. 10 was first registered the approved plan showed only a portion of the full parcel. The boundaries of this portion are clearly delineated by thick black lines. The Administration building sits on this portion but the building itself does not appear on the plan as the other strata buildings do. This indicates that the administration building is not a building for the purposes of the Act (see the definition of building in section 2 above).

35. It is not an issue in this case, but I mention it only because it baffles me how the strata plan came to be registered when only a portion of the original parcel was shown. What is even more bizarre is that that registered plan shows parcels 342 and 328 which could no longer possibly be in existence at that time. They had by then been absorbed into the single parcel 3841. (Although parcel 342 is not listed on the mutation document, the plan attached thereto, which relates to parcel 3841, shows quite clearly that it must have been included). But again, I digress.

36. Attached to the Defence is a copy of the land register relating to Parcel 3841. It shows the Proprietors of Strata Plan No. 10 (which is the Corporation) as



the registered proprietor. However, there is no record in the property section that the land comprised consists only of the common property. This shows that there has only been partial compliance with the mandatory procedure outlined in section 10 of the Act which states that the Registrar shall

*“(c) in respect of the register relating to the parcel –*

*(i) record in the property section that the land comprised consists only of the common property;*

*(ii) in the proprietorship section, delete the name of the proprietor, substitute the name of the strata lot Corporation....” (Emphasis mine).*

37. While Counsel for Mr. Janmohamed was at pains to remind the Court that before being a strata development, the Parcel was a mutation of twelve smaller parcels, I wish only to comment that he could not have registered a single strata development on all that land unless it comprised only one parcel. What it was before registration is of no import to this case and does not further his claim in anyway. Instead, Mr. Janmohamed ought to concern himself with demonstrating the basis for his claim of ownership of the land, on which the administration building stands, perhaps through the production of the register. It is obvious that he cannot do this because he is no longer the registered proprietor.

38. Counsel goes on to explain that apportioning the single parcel was the developer’s way of phasing the strata development. So what appears on the first strata plan filed was, according to him, the first phase of the development. He does not, with equal enthusiasm, explain pursuant to what section of the Act the Claimant purported to do this. Nor am I guided as to under what authority the Registrar purported to act when a strata plan which

dealt with only part of a parcel was registered. But again, the Registrar is not a party to this claim.

39. Further, Counsel for the Claimant, boldly contends that “(t)he Defendants could not possibly be heard to be arguing that because “**Plan A**’ only has 7 buildings, they are then entitled to the remainder of Parcel 3841 ..... as “common property”.” In the present circumstances, particularly the state of the register, this may perhaps not really be the best foot to put forward.
40. By way of an amendment to No. 10, the Claimant registered eight new buildings on October 21<sup>st</sup>, 2002. This expanded the original strata plan to include the remainder of Parcel 3841 and showed the seven original buildings as well as eight new buildings. None of the new buildings fell within the parameters of the original registered Strata Plan and the Defendant does not challenge this amendment in anyway.
41. The current Registrar in her testimony admitted to never having considered an application for amendment or having registered an amendment to a strata plan. However, she concluded that it was possible and cautiously informed that she would refer to the Act and the Regulations for guidance. The Registrar’s power to amend a strata plan is to be found in regulation 7:
- “The Registrar, after such inquiries and notices, if any, as he may consider necessary, and upon the production of such evidence and the compliance with such requests, if any, as he may think necessary may-*
- (a) number or re-number any strata lots in a registered plan;*
  - (b) Supply omissions and correct patent errors in a registered strata plan;*
  - (c) Amend a registered strata plan in such other manner as he may think proper.*
42. Perhaps because this particular amendment has not been challenged, nothing was presented to the Court of what, if any, evidence the Claimant had

produced to the then Registrar to have this amendment effected. Nor is there a record of what inquiries and requests were made or what notices were sent out by the Registrar. Because of this gap the Court remains unaware of whether the amendment was approved based only on the bare application made for registration of the eight new buildings by the Claimant or something more. But the amendment was registered and it has not been challenged. Again Counsel for the Claimant raised that by not laying claim to all the vacant land in this amendment and claiming only the vacant land in the first plan, the Defendant was acting arbitrarily. Perhaps counsel was not aware but the Defendant by its counterclaim sought a declaration of ownership of Parcel No. 3841, comprising of the common property. It makes no arbitrary claim to only a portion.

43. While I am not asked to determine the scope of the Registrar's power to amend, I state only that it could not be wide enough to allow the construction of buildings by a developer who no longer owns the parcel. If this were so, the implication is that the Registrar would be disposing of the common property without the consent of the Corporation and without ensuring that the members all adhered to the strict requirements of section 14 of the Act (above). It would also mean that an application dealing with proprietary rights would have been entertained from someone who no longer holds any proprietary interest.
44. Because a strata is a statutory construct, which, unfortunately, originally made no provision for phasing, neither the developer nor the Registrar seemed to have had the right or the power respectively to do any of this. But it has been done and in these proceedings (and at this stage where new lots

have been sold) it cannot possibly be undone. Sensibly too, the Defendant does not seek any relief in this regard.

45. There is no doubt that the absence of a framework for phased developments was a serious lacuna in the Act. This did not mean, however, that the provisions of the Act could simply be flouted to accommodate the wishes of a developer. Nonetheless, the Corporation and Mr. Janmohamed carried on as if the development had indeed been phased and the only issue thereafter seemed to be procedure.
46. After the amendment to the Regulations the Claimant wrote to the Registrar with a plan for two more ‘phases’. One of these phases includes the two buildings which are to be positioned where the administration building now stands. The plan was in fact registered on the 15<sup>th</sup> November, 2006. Mr. Janmohamed pleads that the strata plan had thereby been formally amended by the Registrar based on a “*no objection letter from the Proprietors.*” I have made a thorough search, but can find this procedure nowhere in the Act. Be that as it may, the plan has been registered and remains so registered. What then are the implications?
47. The Court can only assume that this latest ‘phase’ was done pursuant to the amendment to the regulations which introduced phased developments since none of the buildings, which appear in the two new phases, actually exist. At best, (if at all possible) this registration is of a further proposed strata lot development plan and nothing more. The Registrar certainly has no authority to open any registers for any units which have not yet been built and which did not appear on a phase strata plan or form part of a complete strata plan.

48. The Court considers that, from what has been provided, it is clear that the Claimant always intended to phase the development and it was never his intention to transfer all of the parcel to the Corporation before completion of the entire development. It is also clear that the Corporation was well aware of this. Their acceptance of the 2002 amendment; their assimilation of the new owners into the Corporation; and their prolonged silence regarding the 2006 amendment which ended only on Mr. Janmohamed's claim for possession of the administration building, supports this view entirely. And although, the original Act did not contemplate or allow phasing, Mr. Janmohamed was able to partially achieve this through the registration of a number of documents which have never been impugned.
49. Mr. Janmohamed has now registered what seems to be a further proposed strata lot development plan pursuant to regulation 19(3). Although the Defendant, in its counterclaim, insists that the Registrar was wrong to have registered that plan they have not seen it fit to join the Registrar in this matter or to take action against her for her decision. That registration therefore continues to be valid until and unless impugned. This court has no intention of making any decisions against any one not a party to this claim and who has had no opportunity to defend the action against them.
50. Mr. Janmohamed is swift to point out that the original registered strata plan only depicts a small part of Parcel 3841. Ergo, the Defendants cannot be heard to claim the remainder of Parcel 3841 as it was not depicted in the parcel outlined on the strata plan originally filed. If this argument holds, then since the area of contention was, it must clearly belong to the Defendant as common property. Further, where No. 10 was amended to

include the remainder of Parcel 3841, all the land not forming part of a strata building ought to be common property. Mr. Janmohamed's process of phasing immediately shows its flaws. If he intended only small sections to be developed, why then did his plans not show those sections intended to form that particular phase only?

51. But following the Claimant's assertion that he phased the development, logically even where the register relating to parcel 3841 does not specifically state that it refers to the common property, the Court should have been able to look at the registered strata plan to determine how much each unit entitlement was and to use that to calculate how much of Parcel 3841 may have been intended to be transferred by the Developer. But we are confronted by what seems to be yet another error.
52. Let me explain. By section 4(1)(d) every strata plan ought to have endorsed on its schedule the unit entitlement of each strata lot. This informs the Registrar's own entry in the register and on the certificates. Although Form 2 has a section labelled unit entitlement, I am informed by the Claimant that only the square footage of each individual unit is placed there. The common property seems simply to be ignored. It is this same square footage alone which appears on the certificates issued to the proprietors of strata lots.
53. It is imperative to note that form 2 makes a direct reference to Regulation 4 which defines precisely what is to be included. This is stated to include the matters prescribed by section 4 (d) and (f). The Court understands this to be section 4(1)(d) and (f) since no other subsection of that section has both of these letters. Section 4(1)(d) speaks specifically to the unit entitlement of each strata lot. Perhaps it would be wise for the Registrar now to ensure that

there is full compliance for every strata development. She may also wish to properly use her power under Regulation 7 to correct this pervasive error.

54. It appears, too, that all that would have been transferred, according to the certificates of title, to each individual owner would have been the approximate floor area of their lot. This certainly does not include any part of the common property (whether that area is accepted or is in contention). So this inquiry takes us no further.
55. Perhaps a look at the amounts paid in land tax may have been of assistance but nothing was provided in this regard. So what is the Court to do but consider the register and the course taken by the parties.
56. It is Mr. Janmohamed's case that he has been excluded from the Administration building for eight years. During this time, he says, the Corporation refused to vacate. He never once said he made any attempt to get them out.
57. It seems incredible that he would have sat back for that long knowing the building belonged to him. It was not until 27<sup>th</sup> September, 2017 that he served a notice to quit. The Defendants continue in occupation nonetheless.
58. This Court finds that all that land which formed part of the original plan No 10 and was not a strata building, was common property which ought to have been apportioned as unit entitlements before the strata plan was registered or strata titles were issued. The administration building stands on that common property. It, therefore, forms part of that common property and rightly

belongs to the Corporation. It cannot now simply be torn down and the land beneath it developed by Mr. Janmohamed.

59. The Registration of a further proposed strata lot development plan cannot transfer the Defendant's interest in the common property. Section 13(3) is clear; save as is provided in this Act, no share in the common property shall be disposed of except as appurtenant to a strata lot. Section 14 goes on to explain the process by which the common property could be disposed, whether through transfer or lease. A further proposed strata plan is, understandably, not included there.

Disposition:

1. The Claim is dismissed with costs to the Defendants in the sum of \$15,000.00.
2. By consent the counterclaim is adjourned to the 26<sup>th</sup> February for Report.

**SONYA YOUNG**  
**JUDGE OF THE SUPREME COURT**