COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side
2017/CLE/gen/FP/00224

BETWEEN

ROD ALEXANDER STEWART
First Plaintiff

AND

SHANNON GAY STEWART
Second Plaintiff
AND

HARBOUR HOUSE TOWERS CONDOMINIUM ASSOCIATION
Defendant

BEFORE:	The Honourable Justice Petra M. Hanna-Adderley
APPEARANCES:	Mrs. Ruby Gray for the Plaintiffs
	Mrs. Tiffany Dennison for the Defendant
HEARING DATE:	March 29, April 30, September 3, 2018

RULING

Hanna-Adderley, J

Application for Judgment on Admissions

Introduction

1. The Plaintiffs are the owners of Apartment Units 901 and 902 ("**the Apartments**") at Harbour House Condominium Apartments ("**the Condominium**"), Freeport, Grand Bahama and are ordinarily resident in Alberta Canada. The Defendant is the body corporate responsible for the management, administration and operation of the Condominium.
2. On October 6, 2016 Hurricane Matthew ("**the Hurricane**") made landfall on the Island of Grand Bahama and the Apartments were damaged. The Apartments were further damaged by heavy rains on April 23, 2017. On or about May 15, 2017 temporary repairs were made to the Apartments by employees of the Defendant. On September 17, 2017

the Defendant was put in funds by Star General Assurance to effect the repairs to the Condominium but as at September 19, 2017 when the Specially Endorsed Writ of Summons was filed herein, the permanent repairs to the Units had not been effected.

3. The parties are before the Court on an application pursuant to Order 18 Rule 13 (1), 13 (2), Rule 13 (4), and Order 27, Rule 3 of the Rules of the Supreme Court ("**the RSC**") and the Court's inherent jurisdiction commenced by way of a Notice of Motion for Judgment on Admissions filed on November 20, 2017, for an order for Judgment based on admissions contained in the Defendant's Defence filed on October 3, 2017. The Plaintiffs' application is supported by their Affidavit filed on December 13, 2017. The Plaintiffs also rely on Written Submissions laid over to the Court on April 30, 2018 and Written Submissions in Reply to the Defendant's Skeleton Submissions filed on August 15, 2018. The Defendant opposes the application. The Defendant relies on the Affidavit of Mr. Ron Jones filed on the March 15, 2018 for the purpose of this application and on the Written Submissions filed on August 23, 2018.
4. By way of Notice of Motion For Judgment on Admissions the Plaintiffs seek the following orders: that the Defendant pays damages to the Plaintiffs for loss of the use of the Apartments; that it repairs the roof and ceiling of the Apartments; that it repairs any and all incidental damages to the interior and exterior of the Apartments; that it replaces any and all damaged contents, fixtures, appliances and furniture of the Apartments; that the Defendant pays damages to the Plaintiffs, together with costs to be taxed if not agreed and such further or other relief as the Court deems just.

Statement of Facts

The Evidence

5. The Affidavit of the Plaintiffs states, in part, that the Defendant has admitted paragraphs 1-6 of the Statement of claim, the unnumbered paragraph between paragraphs 7 and 8, paragraphs 10 and 14, of the Statement of Claim. That the Defendant has made several non-admissions, that is, the Defendant has either made no admission or made no denial to several paragraphs in the Statement of Claim as seen in paragraphs 7, 9, 11, 13, 14, 15, 18, 20, 21, 22 and 23 of the Defence. The Plaintiffs state that the Defendant at paragraph 19 denied the claim particularized in paragraph 25 of the Statement of Claim and at paragraph 24 denied paragraphs 30 to 32 of the Statement of Claim. That they were advised by the Defendant's Board Meeting Minutes dated November 16, 2017 that

the repairs to the interior of the Apartments had been completed, however, the Plaintiffs were never contacted by the Defendant to enter the Apartments to assess the damage or the preparations being made to carry out the repair work notwithstanding that the action was already pending. That the Defendant had indicated that it would engage an independent inspector to assess the repairs but the Plaintiffs were of the view that they should be invited to agree upon the selection of the inspector.

6. The Affidavit of Ron Jones, the President of the Board of Directors of the Condominium as at the 2017 AGM, states, in part, that after Hurricane Matthew the Board of the Defendant sought to immediately "dry" in damages to the roof while finding qualified and available contractors to deal with the damages sustained. The Board sought to hire their own staff to effect temporary repairs to stop the continuing damage at a cost of $5,000.00 for labour and material. The Board also consulted with Norman Trembly an owner with experience in the field. An appraiser from Star General Assurance, the insurers of the Condominium assessed the damage at below the deductible of $400,000.00 and was of the view that it would not be worth making a claim. That the Defendant did not agree and other opinions were sought as the opinion did not consider the height of the buildings. That on November 10, 2016 the Board made recommendations to the Unit owners at a meeting. The minutes indicate that the Board was awaiting estimates from local contractors for the roof work and that most contractors were experiencing a backlog of work and that mor information would be coming in the near future. In November 2016 under the supervision of Norman Trembly more patching was done to the roof. A number of contractors indicated in writing that they could not take on the repairs.

7. That in January 2017 no one was available to repair and close in the roof and therefore MK Bahamas and Roof Guys from Canada were hired out of Canada at a cost of $13,500.00 to solidify the temporary repairs. In December 2016 Smith Orloff and Associates were hired by the Defendant to give an opinion on the damages. In March 2017, Smith Orloff attended the AGM to advise the owners on the claim. In April 2017 an EGM was called and quotes provided to commence the work while the matter was ongoing with the insurers and to assess the owners for repairs to be affected and reimbursed after the insurance settlement. The Board was also given the authority to enter into a contract over $300,00.00 so that the repairs could go forward. The Plaintiffs voted "No" to the same through a proxy. On September 17, 2017 Star General provided funds for the repairs in

the sum of $418,892.95 and no assessment or reimbursement was necessary. That the Unit owners were advised each step of the way and the Plaintiffs voted against an assessment to effect immediate repairs. That on October 18, 2017 repairs commenced by Leroma's Roofing Company and an engineer Mr. W. Carver Grant was hired to oversee the work.

8. That the Plaintiffs were kept appraised of the repairs via email. That the Plaintiffs did not come to secure any of their personal belongings nor did they send 3rd parties to do the same. They have no content insurance. That the Plaintiffs attended the Apartments twice a year for a period of 2 weeks and have not sought to mitigate their losses. The Plaintiffs voted against proceeding with immediate repairs based on an assessment to be repaid. Reports from Arnold Davis dated January 18, 2018 and February 9, 2018 were exhibited indicating preexisting mold in the Apartments and recommendations for treatment and photographs of the Apartments before and after treatment. That the Defendant honoured all provisions of the Act and the Byelaws and that the Plaintiffs commenced a premature action.

Submissions

9. Mrs. Ruby Gray, Counsel for the Plaintiffs submitted, with respect to Order 18 r 3 of the RSC, that, as held in **Technicstudy Ltd v Kelland [1976] 3 ALL ER** *"an Order should only be made under that rule if it is plain that there are either clear express or clear implied admissions"* Roskill L.J. She referred the Court to **Ellis v Allen [1914] 1 Ch. 904 p. 909** and submitted that an admission may be made in a letter before or since action was brought and as such there were admissions in correspondences as evidenced in the Affidavit of the Plaintiffs.
10. Mrs. Gray submitted that at the center of this action is the breach of covenant as contained in the Declaration, Conveyance, the Bylaws, the Rules and the Act by the Defendant's failure to attend to the necessary repairs of the Apartments in a timely manner resulting in the Plaintiffs' loss of use and enjoyment of the same. She also submitted that it is not in dispute that the Defendant failed to make the necessary repairs to the Condominium's roof and ceiling and the Apartments as referenced in the Plaintiffs' Affidavit.
11. Mrs. Gray submitted that Section 12 of the Declaration describes "Common Property" and that Section 15(1) of the Declaration states that the body corporate covenanted to, inter alia, at its expense, repair the body corporate all common property and make good any

incidental damage caused thereby to any unit. She further submitted that the Plaintiffs in seeking to mitigate their damages caused to the Apartments by the Hurricane, immediately advised the Defendant of the damages to the Apartments, thereby complying with Section 15(3)(c) of the Byelaws.

12. Mrs. Gray submitted that the Defendant's Defence that the reason for their delay was because it waited to receive the proceeds of the insurance claim to enable it to attend to the repairs are baseless as Section 18(i) of the Declaration provides that the proceeds of insurance are to be held in trust by the body corporate for the unit owners affected by the loss to repair or reconstruct the buildings, subject to Section 30 of the Act.
13. Mrs. Gray submitted that in addition to the non-admissions by the Defendant as contained in Paragraphs 16-26 of the Plaintiffs' Affidavit, and notwithstanding the purported completion of repairs made by the Defendant to the Apartments by virtue of a letter dated 11th December, 2017 from its office, the Plaintiffs continue to suffer significant damages as a result of the Defendants breach of covenant. It is also her submission that considering the total investment made in purchasing the Apartments in the sum of over $430,000.00 alone and the fact that they were ordinarily resident in the Province of Alberta, the Plaintiffs were compelled incur legal expenses to engage the services of their attorney to safeguard their interest as the Defendant permitted the Apartments to remain in and continue to be in a state of disrepair in excess of twelve (12) months. She further submitted that it is irrelevant that the Plaintiffs were not regularly in occupation of the Apartments throughout the period of their disrepair, and it is not fatal to their claim in the action herein.
14. Further, Mrs. Gray referred the Court to the case of **Moorjani v Durban Estates Ltd [2015] EWCA Civ 1252.** And submitted that the Plaintiff's loss of use and enjoyment of their apartments are "symptoms" of the damages and disrepair caused by the Hurricane and permitted to continue by the Defendant's breach. In particular Lord Justice Briggs stated: "*In my judgment, the critical part of that analysis for present purposes is Carnwath LJ's conclusion that "distress and inconvenience caused by disrepair are not freestanding heads of claim, but are symptomatic of interference with the lessee's enjoyment of that asset". I would not, for my part, limit that observation to long leases, so as to exclude periodic, secure or even statutory tenancies. In each case, the lessee or tenant enjoys a recognizable species of property right, in return for payment, either in the form of a*

premium, a rack rent or a fair rent. If in any of those cases the amenity or value of that bundle of rights to the lessee or tenant is impaired by the lessor's or landlord's breach of covenant, then that is a loss of which discomfort, inconvenience or distress (or the breakdown in health of a loved one) are all symptoms."

15. Mrs. Gray submitted that in assessing general damages, the Court ought to consider the case of **Wallace v Manchester City Council (1998) 30 HLR 1111**, in which Morritt LJ said in relation to the assessment of general damages for a landlord's failure, at page 1121: *"Thus the question to be answered is what sum is required to compensate the tenant for the distress and inconvenience experienced because of the landlord's failure to perform his obligation to repair. Such sum may be ascertained in a number of different ways, including but not limited to a notional reduction in the rent. Some judges may prefer to use that method alone .... some may prefer a global award for discomfort and inconvenience .... and others may prefer a mixture of the two ....But, in my judgment, they are not bound to assess damages separately under heads of both diminution in value and discomfort because in cases within the third proposition those heads are alternative ways of expressing the same concept."*
16. Mrs. Gray further submitted that the Defendant's Defence and Paragraph 16 of the Affidavit of Ron Jones allege that "*the Plaintiff's did not secure any of their personal belongings. Nor did they send any third parties to do the same*". An email from Harbour House Towers to the Plaintiffs marked "RS11" and exhibited in the Affidavit of the Plaintiffs dated 26th April, 2017 evidences that the Defendant assured the Plaintiffs (non-residents) as it relates to their personal property remaining in the apartment Units, that the Defendant "*monitored to prevent damage to your furniture*"...the Defendant in the email further took care and precaution regarding the Plaintiff's property by stating "*the furniture was placed in the middle of the room to avoid damage in the event the ceiling falls*" ...."*I am sorry about this, but am taking precautions to ensure that your furniture is not damaged*"
17. Mrs. Gray submitted that while the Plaintiffs allowed the Defendants unlimited access to the Units as required by the Conveyance, Declaration and Rules to attend to the repairs, to make any necessary inspection and monitoring of the Units whose roof and ceiling forms part of the common property of the Condominium, the Defendants, their employees

or agents had in turn acted as *agents* on behalf of the Plaintiffs to inspect their Units and contents.

18. As it relates to the assessment, Mrs. Gray also submitted, that until such time as there is a demonstrated clarity and understanding from the Board that they understand, recognized and addressed the full scope of damage, they did not support the proposed amount. The Plaintiffs told the Defendant that it would be negligent to ignore the other known costs/repairs that needed to be included in the amount. The Plaintiffs told the Defendant that they would support an amount that reflected the full scope of what it was going to take to deal with the repairs inclusive of their damages.
19. Mrs. Gray submitted that, with respect to the proposed amendment to increase the amount of a contract, that the Plaintiffs did not approve the proposed increase without due diligence to ensure that any and all contracts awarded had undergone due diligence.
20. It is her submission that the Plaintiffs are entitled to commence an action and contend that the action herein has merit and is a reasonable cause of action regardless of the Defendant's claim that it is pre-mature and therefore a nullity.
21. Mrs. Gray submitted that Section 26 of the Act applies to where LESS than 75% damage is suffered to the Condominium, and it is not in dispute by the Plaintiffs or the Defendant that less than 75% of the Condominium suffered damage. She submitted that the Plaintiffs abided by section 8 of the Byelaws and allowed the Defendants access to the Unit, the Plaintiffs and Defendants had been in communication with each other through emails and telephone calls placed from the Plaintiffs to the Defendant. The Plaintiffs contend that they do not have to wait until more than 75% of the Condominium is destroyed, or the Defendants obtain the proceeds of the Insurance money, or wait and just be patient in the midst of destruction and loss until the Defendant organized itself enough in order to function to bring an action to safeguard their interests and investments made through their hard work and finances. It is Mrs. Gray's submission that the Plaintiffs have suffered anxiety, distress and frustration as a result of the hurricane and the lack of foresight and use of legislative frameworks by the Defendant.
22. Mrs. Gray submitted that the Act has provisions to safeguard the Defendant in the event of a disaster under Section 26 (1)(2) & (3) where any **scheme** proposed by them is not approved. If the Defendant could not get the necessary approval, it should have followed Section 26. Further, Section 26(3)(a) provides alternatives for any unit owner who does

not wish to be a part of the scheme. The Plaintiffs were not even given the opportunity to consider this fact due to the Defendant's not knowing their own rights (for their own benefit) under the said Act.

23. Further, Mrs. Gray argued that the Defendant acted as agents of the Plaintiffs, under the doctrine of agency of necessity, and she referred the Court to the learned Authors of Bowstead on Agency, Fifteenth Edition on pages 29 and 84. Mrs. Gray submitted that the actions of the Defendant in the aftermath of Hurricane Matthew were tantamount to the doctrine of agency of necessity, without any contractual agreement between the Defendant and the Plaintiffs. As a result of the doctrine of agency of necessity, the Plaintiffs are seeking equity with clean hands.

24. Mrs. Gray submitted that the Defendant seeks to rely on the case **of Ash v. Hutchinson & Co** [1936] 2 All E.R. 149 In that case the admissions centered around two letters from the Defendant's solicitors to the Plaintiff's solicitors where the Court determined on a construction of the letters that they were *intended* to contain an admission by the Defendants therein. The Court found that the Plaintiffs tried to extend their claim by reference to the "intended" admission which were not clear. Further she submitted that the case of **Ash v Hutchinson & Co. (supra)** supports the Plaintiffs position as Green L.J. held that "A plaintiff who relies for the proof of a substantial part of his case on admission in the defence must in my judgment show that the matters in question are clearly pleaded and as clearly admitted; he is not entitled to ask the court to read meanings into his pleadings which, upon a fair construction do not clearly appear, in order to fix the defendants with an admission." Green LJ also determined that an appropriate allegation must be made in pleadings which would then support any implied admission that a Plaintiff sought to rely on in a Defendants' Defence.

25. It is Mrs. Gray's submission that it does not matter that the Plaintiffs were not tenants and the Defendants were Landlords in that they did not held a lease hold interest. The Defendant seeks to argue the "titles" of the parties in this action which have no bearing on the common law or statute law related to property and covenants to repair. Mrs. Gray submitted that the central issue at hand is that we have an entity, a person or a body like the Defendant who has covenanted and agreed with the Plaintiff (regardless of their ownership or intermittent and infrequent residency) of a premises or property such as their two units to affect certain repairs. The Conveyance, Declaration and Bye laws all

show that the Plaintiffs and the Defendant covenants related to repair and maintenance of the Condominium. While the payment of maintenance fees are not equivalent same as rental, the payment of such fees are for the benefit for the Plaintiffs to enjoy their property and is their part proceeds towards the funding of any repairs.

The Defendant

26. Mrs. Tiffany Dennison submitted, in part, that the Defendant's evidence illustrates that the Defendant took measures to immediately close in the roof and damage with immediate temporary repairs. She further submitted that the Defendant has illustrated that it diligently looked for an available and qualified contractor and surveyor for metal roofing and the height of the building; that not just any contractor would deal with metal roofing and the height of the building; the companies or parties solicited were either incapable or not available and that these efforts commenced one month after the Hurricane Matthew event itself.
27. Mrs. Dennison submitted that when these works took longer than expected, the island being devastated and contractors, as well as supplies, were in low supply, and insurance funds delayed, the Defendant took a vote to assess all unit owners for the repairs and then reimburse unit owners with insurance funds when they were provided and allocated. She contended that the Plaintiffs refused and the Plaintiffs in effect stopped the Defendant from completing the duties that the Plaintiffs now claim were not attended to.
28. It is her submission that the Plaintiffs have failed to mitigate any losses that they incurred due to the Act of God that ravaged Grand Bahama; they failed to insure their contents and they failed, by themselves or an agent, to secure their contents prior to the Defendant doing so. Mrs. Dennison also submitted that they failed to provide any evidence of the damages that they have incurred and that the Plaintiffs even voted for no work to commence before the insurance was paid, yet they filed a suit against themselves and all unit owners for delays they contributed to. She submitted that the Plaintiffs are seeking equity but have not approached the Court with clean hands. (Equity *Halsbury's Laws of England*, Vol 16(2), 2003).
29. Mrs. Dennison submitted that the action was premature in that the repairs were underway and near completion when this Action was launched and were completed before the hearing date and still remains premature. She submitted that the evidence shows that the Plaintiffs were advised of this prior to the launch of the Action and yet preceded and the

Defendant questions whether this is due to the payment of insurance funds the Defendant received.

30. Mrs. Dennison further submitted that the arguments of the Plaintiffs all hinge on the wording of the Act, specifically UNDUE delay. It is then for the Courts to review all the evidence presented to adjudicate upon; whether there was a delay in obtaining services, in attending to an imposed duty under the Act. From there, the Courts must determine if steps were taken to preserve the property with the temporary repairs, done twice, until a duly licensed and authorized contractor became available.
31. She also noted that the submission of the Plaintiff refers to Section 26 of the Act which applies to a building which was rendered to have 75% damage or more. Moreover, per the Association rules (not being over 75% damaged) the Plaintiff must gain the unit owners permission to expend funds over One Thousand Dollars ($1,000.00) for any repairs to be effected.
32. In addition, Mrs. Dennison submitted, Section 8 of the Bye Laws refers to the unit owner promptly advising of damages to the unit. The Board of the Association was aware of the damages before the Plaintiffs, and advised the Plaintiff each step of the way. In turn the Plaintiffs relied only on the Defendants with no agents of their own to assist with mitigation, to take stock to assess their damages or seek to have any of their personal items preserved to mitigate their perceived losses.
33. Mrs. Dennison submitted that it is also noted that the arguments of the Plaintiffs provided to the Courts is that the job cannot have been completed without the inspection of the Plaintiffs or their agents. The Defendant remains perplexed as to how the Defendant was to commence and complete repairs without the benefit of contractors, surveyors, insurance funds or even an assessment, but the Plaintiffs now claim it cannot be completed without this element they have not attended to. The Plaintiffs never sought to send an agent to assess damages and advise the Association of the extent, but now claim that until their agent has inspected the unit, the repairs cannot be completed. She submitted that the Plaintiffs failed to mitigate further losses by not attending to having the unit inspected even after they had been advised of the repairs completion.
34. Mrs. Dennison submitted that the Plaintiffs maintain that the Association should have applied to the Supreme Court for a determination of a schedule for repairs. However, a schedule for repairs has been provided for and presented to the Unit owners. She also

submitted that the availability of the insurance funds and contractors was the issue which is not within the control of the Board, although temporary repairs were attended to and put into effected immediately.

35. Mrs. Dennison submitted that the Defendant admits its formation and obligations under the Act but have made no admissions on the issue of failure to act as obligated; this is a matter for trial. Per the evidence provided by the Defendant, she submitted that the obligation has been fulfilled and that agreeing the obligation is not an admission of failure to act adequately or at all. The Defendants are consistent in their obligation but not liability to the Plaintiffs as if they have forgone the obligation all together. The liability and alleged debt is denied, as such the admissions cannot be judged upon.
36. Mrs. Dennison submitted that Mr. Jones exhibited a report concerning the mold issues in the Apartments and that the Plaintiffs have endured this situation for years. She submitted that the mold is caused due to the lack of living in the unit which remains closed, with shutters drawn and no air circulation and that the mold is not the result of the hurricane and the repairs.

The issues

37. The issues to be determined by the Court are (1) whether the Defendant's admissions of fact are such clear admissions of facts in the face of which it is impossible for the Defendant to succeed; and (2) whether it would be just in this instance to grant the Judgment on admissions.

Analysis and Discussion

The Law

38. Order 18, Rule 13 provides as follows:

"13. (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may

be; and a general denial of such allegations, or a general statement or non-admission of them is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted."

39. Order 27, Rule 3 of the RSC provides:-

> "3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by motion, or summons."

40. The Declaration at Clause 12 describes "Common Property" as:

> "*...all of the real property improvements and facilities of the condominium other than the apartment units....and includes all personal property held and maintained for the joint use and enjoyment of all the owners of the units*"
>
> And Clause 15(1) of the Declaration provides that:
>
> "*The body corporate shall maintain, repair and replace at the expense of the body corporate all common property and shall make good any incidental damage caused thereby to any unit.*"
>
> And Clause 18(i) of the Declaration provide that:
>
> "*the proceeds of any insurance effected by the body corporate under Section Fourteen (14)(1)(c)of the Act shall be held by the body corporate in trust for the unit owners and (their mortgages as their interest may appear) affected by the loss for the purpose of the repair or reconstruction of the buildings save where the provisions of Section Thirty (30) of the Act are invoked.*"

41. Section 15(3)(c) of the Byelaws provides that:

> "*The Unit owner shall:-...promptly report to the body corporate any defect or need for repair the responsibility for remedying which lies in the body corporate.*"
>
> The Bylaws at Clause 1 adopt the statutory byelaws set out in the Law of Property and Conveyancing (Condominium) Act ("**the Act**") which provides as follows:
>
> "*A unit owner shall —*

(a) permit the body corporate and its agents, at all reasonable times on notice (except in case of emergency when no notice shall be required), to enter his unit for the purpose of inspecting the same and maintaining, repairing or renewing pipes, wires, cables and ducts for the time being existing in the unit and capable of being used in connection with the enjoyment of any other unit or common property, or for the purpose of maintaining, repairing or renewing common property, or for the purpose of ensuring that these byelaws are being observed;"

42. The Act provides as follows:

Section 14(1) -

"The duties of the body corporate shall include the following —

(a) to operate the property for the benefit of all unit owners and to be responsible for the enforcement of the byelaws;

(b) to keep the common property in a state of good and serviceable repair;

(c) to insure and keep insured the building (in respect of which the body corporate shall be deemed to have an insurable interest) to the replacement value thereof against fire, hurricane and seawave unless the unit owners by unanimous resolution otherwise decide;

...

(g) to carry out any other duties which may be prescribed by the Declaration of the byelaws."

And Section 26 (1), (2), and (3) gives further consideration as to the timeframe for repairs to be made in accordance with the extent of damage/repairs:

"(1) It shall be the duty of the body corporate promptly to repair or reconstruct the building where it has sustained damage which —

(a) renders less than seventy-five per cent of the accommodation in the building unfit for occupation; or

(b) is in excess of that prescribed by paragraph (a) and within sixty days of the event causing the damage ninety per cent or more in number of the unit owners have resolved that the building shall be reconstructed.

(2) The proceeds of insurance (if any) shall be used for the purpose of the repair or reconstruction of the building under this section and any deficiency shall constitute common expenses within the meaning of this Act.

(3) Where in pursuance of subsection (1) of this section it becomes the duty of a body corporate to repair or reconstruct the building, the body corporate shall, without undue delay, draw up a scheme for the purpose and if such scheme (either in its original or amended form) is approved by special resolution, it shall be binding on the body corporate and all unit owners. Where such a scheme is not so approved, it shall be the duty of the body corporate to file a scheme in the Supreme Court which may, after hearing any objections on behalf of individual unit owners, settle a scheme which, having regard to the rights and interests of unit owners generally, appears just and equitable for the repair or reconstruction of a damaged building under this section. Such scheme may include provisions for —

(a) permitting any unit owner whose unit has been damaged and who does not agree to participate in the scheme to convey his unit and his interest in the common property to the other unit owners on the payment of such compensation as the court thinks just;

(b) the reinstatement of part only of the building; and

(c) the conveyance of the interests of some unit owners to other unit owners in proportion to their unit entitlement."

43. A party can answer his opponent's pleadings by denying the whole or some essential part of the averments of fact contained in it. This is called traversing an opponent's allegations. The Supreme Court Practice 1, 1999, The White Book, Commentary at page 340 under the rubric "**Admissions and denials**" at paragraph 18/13/2 sets out the effect of Order 18 Rule 13 thus:

"**18/13/2 Effect of the rule-**The main object of this rule and of r.14 is to bring the parties by their pleadings to an issue, and indeed to narrow them down to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing (per Jessel M.R. in Thorp v Holdsworth (1876) 3 Ch.

D. 637). This object is secured by requiring that each party in turn should fully admit or clearly deny every material allegation made against him. Thus, in an action for a debt or liquidated demand in money , a mere denial of the debt is wholly inadmissible. "

"18/13/3 **Express admissions**-Parties ought properly to admit facts as to which there is really no controversy. A defendant ought not to deny plain and acknowledged facts which it is neither to his interest nor in his power to disprove (Malins V.-C., Lee Conservancy Board v Button (1879) 12 Ch. D 383, affirmed 6 App. Cas.685). No particulars will be ordered of any such admission (Fox v. H. Wood (Harrow) Ltd. [1963] 2 Q.B. 601; [1962] 3 All E R 1100, CA)

...

The effect of the defendant admitting the facts pleaded in the statement of claim is that there is no issue between the parties on that part of the case which is concerned with those matters of fact, and, therefore no evidence is admissible in reference to those facts. (Pioneer Plastic Containers Ltd. v Commissioner of Customs and Excise [1967] Ch. 597; [1967] 1 All E. R. 1053)... "

"18/13/4 Implied admissions-Under this rule there is an implied admission of every allegation of fact made in a pleading which is not traversed in the next succeeding pleading. Such an admission has the same value and effect as if it were an express admission (see Byrd v Nunn (1877) 5 Ch. D. 781; 7 Ch. D 284, CA; Green v Sevin (1879) 13 Ch. D. 589; Collette v Goode (1878) 7 Ch. D. 842, specific denial held to qualify general denial: Symonds v Jenkins (1876) 34 L.T. 277, title not denied) Cookham Rural District Council v Bull (1972) 225 E. G. 2104, CA (date of service of enforcement notice impliedly admitted by non-denial in the defence). A plaintiff must show that the matters in question are clearly pleaded in to fix the defendant with an admission (Ash v Hutchinson & Co. (Publishers) [1936] Ch 489,503)..."

"18/13/5 Traverse by denial or non-admission-A traverse may be made either by a denial or non-admission, and either expressly or by necessary implication (para (2)). A refusal to admit must be stated as specifically as a denial. (Thorp v Holdsworth (1876) 3 Ch. D 637 at 640; Hall v L. & N. W. Ry. Co. (1877) 35 L.T. 848 at 849 and see Smith v Gamlen[1881] W.N. 110). "Defendant puts plaintiff to proof", held insufficient denial (Harris v Gamble (1878) 7 Ch. D. 877). "Defendants do not admit correctness", held as insufficient denial (Rutter v Tregent (1879) 12 Ch. D 758)."

"18/13/6 Traverse must be specific, not general-Every allegation of fact must be specificallyy denied or specifically not admitted...A general denial, or a general statement of non-admission, of allegation of facts is not a sufficient traverse thereon..."

"18/13/7 Traverse must not evasive-A traverse, whether by denial or refusal to admit, must not be evasive but must answer the point of substance.

The pleader must deal specifically with every allegation of fact made by his opponent-that is, he must either admit it frankly or deny it boldly. Any half-admission or half-denial is evasive."

44. Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice 22nd Edition by authors D.B. Casson and I. H Dennis at page 133 states:

'It is in the power of the party either to admit or to deny each allegation in his opponents plea, as he thinks fit, if he decides to deny it, he must do so clearly and explicitly. Any equivocal or ambiguous phrase will be construed into an admission of it. There is no third or intermediary stage. If the judge does not find in the pleading a specific denial or a refusal to admit, there is an end of the matter; the fact stands admitted."

And at page 134:

"It is also common practice to include in a defence a general traverse such as: "Save as is hereinbefore specifically admitted or not admitted, the defendant denies each and every allegation contained in the statement of claim as though the same were set out herein and traversed seriatim." Such a traverse is convenient and permissible when dealing with a long and complicated statement of claim to cover all the allegations which are more or less immaterial and those allegations on which counsel has no instructions. But it should not be adopted in dealing with the allegations which are the gist of the action; to these the defendant should plead as precisely as possible."

Non-admissions by the Defendant

45. As is permitted in practice, at paragraph 25 of the Defence the Defendant states: "...Save as is otherwise herein expressly admitted, the 2nd and 3rd Defendants deny each and every allegation contained in the Statement of Claim as if the same had been herein set out as traversed herein."

46. The Defence at paragraphs 2, 7, 9, 11,12,13,14,15,18 are general statements of non-admission of allegations of facts made in the Statement of Claim and are not a sufficient

traverse of them, however, as is permitted, the general traverse at paragraph 25 covers these allegations.

Denials by the Defendant

47. The Defence at paragraphs 19, 20,21,22,23,24 and the initial portion of paragraph 25 are general denials of allegations of fact made in the Statement of Claim and are not a sufficient traverse of them, however, as is permitted, the general traverse at paragraph 25 covers these allegations.

Admissions by Defendant

48. The following are in my view clear and unequivocal admissions of allegations of facts in the Statement of Claim. The Defendant at paragraph 1 of its Defence admits that the Plaintiffs are the owners of the Apartments. The Defendant also admits that the Defendant is subject to the restrictive covenants, conditions and stipulations contained in the following:

    a. An Indenture of Conveyance dated July 24, 1967 and made between The Grand Bahama Development Company Limited of the one part and Harbour House Towers Limited of the other part and recorded in the Registry in Volume 1174 at pages 187 to 197 ("**the Conveyance**").
    b. A Declaration of Condominium dated 20th day of November 1967 and recorded in the Registry of Records in the City of Nassau on the Island of New Providence one of the Islands in the said Commonwealth of the Bahamas in Volume 1224 at pages 36 to 96 ("**the Declaration**").
    c. Harbour House Towers Bylaws ("**the Bylaws**") and Harbour House Towers Rules ("**the Rules**").

49. The Statement of Claim states in an unnumbered paragraph after paragraph 7:-

> "At all material times by virtue of the Declaration, the Conveyance, the Byelaws and the Rules the Defendant was the body corporate responsible for the management administration and operation of the Condominium."

The Defence states at paragraph 3:

> "Unnumbered paragraph between paragraphs 7 and 8 of the Statement of Claim is admitted".

50. The Statement of Claim states at paragraph 10:

"On the 6th October, 2016, by virtue of Hurricane Matthew's ("the Hurricane") arrival and strong winds in and around the Island of Grand Bahama, the Apartments sustained damages to its roof and ceiling, the exterior and interior of the Apartments".

The Defence states at paragraph 6:

"Paragraphs 10 is admitted."

51. The Statement of Claim states at paragraph 14 states:

"On or about 2016, the Defendant installed temporary tarps and plastics on the damaged roof of the building".

The Defence states at paragraph 10:

"Paragraph 14 of the Statement of Claim is admitted".

52. The Statement of Claim at Paragraph 21 states:

"On or about 15th May 2017, the Defendant appeared to have engaged the services of a roofing company who were on the Condominium's premises in an attempt to make temporary repairs to the roof of the Condominium.

The Defence states at paragraph 16:

"Paragraph 21 of the Statement of Claim is agreed. On or about December 2016, May 2017 and again September 2017 (prior to Hurricane Irene) temporary roofing repairs were engaged and attended to."

53. The Statement of Claim states at paragraph 22:

"The attempted temporary repairs were unsuccessful and were made to the external roof of the Condominium only, no temporary or permanent repairs were made to the ceiling of the Apartments and the damage to the roof and ceiling of the Apartments continue to persist. "

The Defence states at paragraph 17:

"Paragraph 22 of the Statement of Claim is in December 2016 HHT's staff temporarily secured the damaged roof. In May 2017 Roofing Guys again secured it at a cost of $10,000.00. This month Leromas Roofing Company made emergency repairs to the roof under the supervision of HHT's engineer, Mr. Wendell Grant (at a cost of $13,000.00). Mr. Grant's fee is to oversee the roof repair is approximately $18,000.00. Mr. Grant is in the final stages of signing off on Leroma's contract to ensure all the proper codes and guidelines are in place."

54. The Defendant has admitted (above) the material allegations of the Plaintiffs claim that the Defendant failed to attend to the necessary repairs of the Apartments between October 2016 and the date of the filing of this action resulting in the Plaintiffs' loss of the use and enjoyment of the same and damages.
55. The Court's jurisdiction when granting an order pursuant to Order 27, Rule 3 of the RSC is **discretionary.** Therefore, I must consider if it would be **just** to grant such an order.
56. In the case of **Ellis v Allen (supra)** whereby the Court determined that for a party to be entitled to a judgment pursuant to Order 27, Rule 3 due to admissions made the admissions of fact relied on may be express or implied but they must be **clear** (**emphasis mine**). Sargant J determined that the rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed.
57. In the instant case I believe it would be just to grant such an order, especially to save time and costs. I agree with the dicta of Sargant J in **Ellis v Allen (supra)** and the judgment in **Technicstudy Ltd v Kelland (supra)** that the rule to be applied in these circumstances is that the admissions of facts must be clear for the party to be successful on such as application. I find that the evidence the Plaintiffs rely on as admissions of fact are clear.

Disposition

58. Therefore, the Plaintiffs application for an Order granting Judgment on admissions made by the Defendant is granted. The Court will now set a date for the assessment of damages.
59. The Plaintiffs have been successful on the application and as costs usually follow the event, costs to be paid by the Plaintiffs to the Defendants to be taxed if not agreed.
60. Finally, I apologize profusely for the delay in the delivery of this Ruling.
61. Although this Ruling was delivered in open Court on August 5, 2021, the engrossed Ruling was not circulated to the parties until today. Pursuant to Order 42 Rule 3 (2) of the RSC the Ruling shall be dated today and the time to appeal the said Judgment takes effect from today.

This 11th day of August, 2021

Petra M. Hanna-Adderley

Petra M. Hanna-Adderley

Justice