COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
2013/CLE/gen/No.02044

BETWEEN:

LUCAYAN TOWERS SOUTH CONDOMINIUM ASSOCIATION
(a Body Corporate in virtue of the *Law of Property and Conveyancing (Condominium) Act*)
First Plaintiff

MAURICE O. GLINTON
MICHAELA STORR
GORDON ADDERLEY
GODFREY BOWE
(suing in their respective capacities as Officers and Directors of the said Body Corporate)
Second Plaintiffs

AND

DOUGLAS PRUDDEN
JULIE GLOVER
YASMIN POPESCU
LINDA CARROLL-STRACHAN
DEBRA EDWARDS
(styling themselves as Lucayan Towers South Board of Directors 2013)
First Defendants

TIFFANY DENNISON
(practicing as a counsel and attorney under the name and style of Dennison & Co.)
Second Defendant

AND

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
2013/CLE/gen/Fp/00230

BETWEEN:

DOUGLAS PRUDDEN
CHRIS ROLLE
YASMIN POPESCU
JULIE GLOVER
LINDA CARROLL-STRACHAN

DEBRA EDWARDS

Plaintiff

AND

MAURICE GLINTON
MICHAELA STORR
GORDON ADDERLEY
GODFREY BOWE

Defendants

Before:	The Honourable Mr. Justice Loren Klein
Appearances:	Meryl Glinton for the First and Second Plaintiffs in Action No. 02044 of 2013 and the Defendants in Freeport Action No. 00230 of 2013; Constance McDonald KC for Julie Glover, Doug Prudden, Yasmin Popescu, and Debra Edwards. Linda Carroll-Strachan being present. No appearance for the Second Defendant in Action No. 02044 of 2013. No appearance for Chris Rolle.
Hearing Dates:	24, 27 March, 22 April, 13 May, 21 June, 19 July, 8 August 2024

RULING

KLEIN, J.

Law of Property and Conveyancing (Condominium) Act 1965—Condominium Association—Order 14, Rules of the Supreme Court (R.S.C.) 1978—Application for Summary Judgment—Order 31A r. 18(2)(i), R.S.C. 1978— Application for Judgment after Determination of Preliminary Issues—Application for Account—Order 37, R.S.C. 1978—Application for Assessment of Damages—Order 29, Rules of the Supreme Court R.S.C. 1978—Application for Injunction—Principles relating to injunctions in Summary Judgment claims—Res Judicata—Order 41 rr. 1(4), 1(5), 1(6), 5 and 6

INTRODUCTION AND BACKGROUND

Introduction

1. This is an application for summary judgment and consequential orders arising from two Supreme Court Actions filed as far back as 2013. Those actions began a legal dispute over the management of a condominium complex in Freeport between rival Boards that would be legendary but for the disastrous consequences it has wrought (see, for example, this Court's Ruling issued 31 March 2025 in *Lucayan Towers South v. Grand Bahama Utility Company et. al.*, 2018/CLE/gen/01480).

2. The legal matters are Action No. 02044 of 2013 ("the Nassau Action") and Action No. 00230 of 2013 ("the Freeport Action"). These are claims brought by the competing Boards against

each other, details of which are explained below. The claims were ordered to be tried together by the Honourable Chief Justice Sir Michael L. Barnett (as he then was) ("Barnett CJ") in January 2014. They were later stayed pending an appeal of Barnett CJ's decision on a preliminary point arising from the claims. In its Ruling on that appeal in September 2017, the Court of Appeal remitted the outstanding issues for hearing by the Supreme Court.

3. There has been extensive litigation between the parties since the institution of the actions in 2013, in the Supreme Court and the Court of Appeal, as well as an attempt to appeal to the Privy Council. However, this litigation did not lead to a disposition of the outstanding issues in the 2013 Actions. It is regrettable and a poor reflection of our judicial system that it just now falls to me in 2025 to cut the Gordian knot of this protracted litigation.

Factual and Procedural Background

4. The history leading up to the commencement of these actions, and since then, has been detailed in numerous affidavits and decisions of both the Supreme Court and the Court of Appeal. In fact, this is my sixth Ruling in actions or applications arising directly or indirectly out of this legal dispute. It is therefore necessary to set out in some detail the considerable background and extensive litigation history to make the applications before the Court intelligible.

5. In the round, both the Nassau and Freeport Actions arose out of conflicting claims by two groups of persons as to which of them properly constituted the Board of Directors of the Lucayan Towers South Condominium Towers Association ("the Body Corporate"). This is the body which by virtue of *sect. 13* of *The Law of Property and Conveyancing (Condominium) Act, 1965* ("the Act") is vested with operation of the property located in Block 5, Unit Two (2) in the Greening Glade Subdivision of Freeport, Grand Bahama. The property ("the Property") was by Declaration of Condominium dated 4th day of October, A. D., 1988 ("the Declaration") made subject to the provisions of the Act.

6. The Second Plaintiffs in the Nassau Action ("the 2005 Directors"), who are also the Defendants to the Freeport Action, were the Board of Directors of the Body Corporate elected at a deferred 2005/2006 Annual General Meeting ("AGM") of Unit Owners, in March 2006 and re-elected at the AGMs for the 2006/2007 and 2007/2008 Fiscal Years.

7. In or about 9 January 2013, a group of Unit Owners of the Body Corporate, along with some non-unit owners, convened what they referred to as an Extraordinary Meeting ("the Disputed EM") of "Lucayan Towers South Condominium Company Limited." At the Disputed EM, the Plaintiffs in the Freeport Action ("the Prudden Group"), who, with the exception of Chris Rolle, are also the First Defendants in the Nassau Action, purported to have been elected as the Body Corporate's Board of Directors, replacing the 2005 Directors.

8. Prior to the commencement of litigation, the Prudden Group, apparently seeking to fortify themselves as the Board of Directors of the Body Corporate, engaged the services of the Second

Defendant in the Nassau Action, Attorney Tiffany Dennison ("Attorney Dennison") practicing under the name and style of Dennison & Co. For example, on or about 9 January 2013, the Prudden Group sent notices to Unit Owners (excluding the 2005 Directors) declaring themselves the new Board of Directors of the Body Corporate, instructing the Unit Owners not to make their maintenance assessment payments to the 2005 Directors or to deposit such payments to the Body Corporate's bank account ("the CIBC Account") held at CIBC First Caribbean International Bank ("CIBC"), to which the 2005 Directors were signatories. The Unit Owners were instructed instead to make such payments to the Prudden Group through Attorney Dennison, to be held in her firm's escrow account.

9. Between 14 January 2013 and 19 April 2013, the Prudden Group attempted on several occasions to gain access to the CIBC Account by way of a series of threatening letters written by Attorney Dennison and sent on her firm's letterhead to CIBC. In or about April 2013, the 2005 Directors became aware of the Prudden Group's communications to the Unit Owners instructing them to divert their maintenance payments from the Body Corporate to themselves and/or Attorney Dennison, as well as their efforts to gain access to the CIBC account.

10. Litigation ensued shortly thereafter, with the Prudden Group commencing the Freeport Action by Originating Summons filed by Attorney Dennison on their behalf on 28 May 2013. That Summons claimed:

> "1. A Declaration of the validity of the Extraordinary meeting of January 9th, 2013 electing the plaintiffs herein as board members per the Declaration of Condominium dated the 4th October, 1988 recorded in the Registry of Records in Volume 5061 at pages 220 to 835 and declared by the Albacore Developments Limited with respect to the management of property known as Lucayan Towers South in the City of Freeport on the Island of Grand Bahama one of the Islands of the Commonwealth of the Bahamas and for the purpose of the *Law of Property and Conveyancing (Condominium) Act*, Ch. 124.
>
> 2. A Declaration that the previous purported board, namely the defendants are to cease and [desist] from the interference of operations of the plaintiffs pursuant to the Declaration of Condominium dated the 4th October, 1988 recorded in the Registry of Records in Volume 5061 at pages 220 to 835 and declared by the Albacore Developments Limited by with respect to the management of property known as Lucayan Towers South in the City of Freeport on the Island of Grand Bahama one of the Islands of the Commonwealth of The Bahamas and for the purpose of the *Law of Property and Conveyancing (Condominium) Act*, Chapter 124.
>
> 3. A Declaration that the defendants are to provide all bank accounts, account details, accounting and funds collected from unit owners in alleged pursuance of the maintenance for the property situate as Lucayan Towers South, to the plaintiffs for further carriage per appointment at the Extraordinary meeting of 9th January, 2013.

4. Such further or other relief as to the Court may seem just."

11. The Freeport Action was first set for hearing on 26 June 2013, at which Mr. Maurice Glinton, one of the 2005 Directors, applied orally (and later by Summons filed 27 June 2013) for an Order striking out the Freeport Action, and for leave to enter a conditional appearance, which leave was granted by Registrar Stephana Saunders on 26 June 2013.

12. Mr. Glinton avers (by affidavit filed 24 December 2013 in the Nassau Action) that sometime between June and July of 2013, Mr. Chris Rolle (who, having lent his name to the commencement of the Freeport Action, but did not participate further) informed him that the Prudden Group had been using money paid to them by Unit Owners as intended maintenance fees ("the Diverted Funds") to pay the fees charged by Attorney Dennison for her legal services. Mr. Rolle also informed Mr. Glinton that he intended to resign because of his objection to the Diverted Funds being used for that purpose, thereby depleting the Body Corporate's funds. Shortly afterwards, he did resign.

13. On or about 11 November 2013, the 2005 Directors posted notices around the Building informing the Unit Owners that the outstanding financial statements for the delinquent fiscal years up to 30 October 2013 had been completed and would be presented at an AGM scheduled for 16 January 2014.

14. The Prudden Group made various attempts to disrupt the notices by destroying or removing them and, on 6 December 2013, they distributed letters under the doors of the individual units in the Building attaching an opinion from Attorney Carey Leonard, of Callenders & Co., whom they referred to as "Lucayan Towers South's attorney." In that letter, the Prudden Group advised Unit Owners not to attend or participate in the AGM scheduled for 16 January 2014 by the 2005 Directors.

15. On 23 December 2013, the Prudden Group ran an ad in the Freeport News indicating to the public that the 2005 Directors were no longer authorized to act on behalf of the Body Corporate and that the Prudden Group was the Body Corporate's new Board of Directors. Also, in or about December 2013, the Prudden Group began advertising notice of an AGM they intended to convene on 12 January 2014.

16. The 2005 Directors then commenced the Nassau Action by generally indorsed Writ filed on 24 December 2013 claiming, *inter alia*:

a) A declaration that meetings (including [the Disputed EM]) and any decisions made and/or taken and/or resolutions passed by persons present in person or otherwise represented at such meetings notwithstanding,

i. The First Plaintiff is the Body Corporate by which legal name vests the operation of [the Property] in virtue of [the Act] and is now subjected to [the Declaration] in accordance with the provisions of the aforementioned Act; and

ii. [the 2005 Directors] alone constitute the Body Corporate's Board of Directors for the time being lawfully entitled to exercise the functions and powers as the Board of Directors in relation to the said [Body Corporate] during the period since the Chairman's adjournment of the Body Corporate's Nineteenth Annual General Meeting on 16th January 2008 as permitted by Article III, Clause (7) of the Condominium Bye-Laws;

b) A declaration that all cash and proceeds of cheques and negotiable instruments ("the said assets") payments of which were diverted to and withheld by [the Prudden Group] and [Attorney Dennison] and now or once in the said Defendants' possession and/or their control since some date prior to 14th December 2012, are [the Body Corporate's] property;

c) A declaration that [Attorney Dennison] whether in the capacity of [the Prudden Group's] agent or otherwise is not entitled to a lien over or in respect of any portion of the said assets remitted to and held by her in any such capacities;

d) An injunction to restrain [the Prudden Group] and [Attorney Dennison] (and each of them) by themselves, their accomplices, privies, agents or otherwise howsoever from disposing of or in any way dealing with the said assets or any amount or part thereof without the consent in writing of [the 2005 Directors];

e) An Order for delivery up by [the Prudden Group and Attorney Dennison] to [the Body Corporate] of [the Diverted Funds] to which it alone is entitled by section 14(2)(b) and (c) of the Act to determine the amount of by levying contributions on Unit Owners and has a duty to collect by Article V(1)(b) of the said Declaration now or previously withheld by [the Prudden Group and Attorney Dennison] knowing the same to be property the legal entitlement of [the Body Corporate]; alternatively, payment of the total sum of the said assets as money had and received to the use of [the Body Corporate];

f) Damages for detention of the said assets; and/or alternatively, for conversion of the said cheques and negotiable instruments;

g) Damages for wrongful interference with [the Body Corporate's] said property;

h) Special Damages;

i) An Order that [the Prudden Group and Attorney Dennison] account for what they did with the said assets or their whereabouts;

j) an Order restraining [the Prudden Group] (and each of them) from doing any of the following acts and things, that is to say:

i. holding themselves out and/or representing themselves as "The Lucayan Towers South Board of Directors 2013", or by any name howsoever called, pending determination of [the Freeport Action] or until after the General Meeting of the Body Corporate set for 8th (sic) January 2014 is held (whichever is sooner); and

ii. not without the consent in writing of the Body Corporate's Board of Directors constituted by [the 2005 Directors], posting or distributing notices or solicitous material in or about the Condominium Property;

k) An Order prohibiting [the Prudden Group and Attorney Dennison] (and each of them) from committing and/or aiding and abetting each other or others in acts within or upon or in respect of [the Property], or otherwise engaging in conduct detrimental to peace and tranquility and orderly management of [the Property];

l) Further or other relief.

17. A Notice and Memorandum of Appearance were filed on behalf of Douglas Prudden, Julie Glover, Yasmin Popescu, Linda Carroll-Strachan, Debra Edwards, and Tiffany Dennison on 9 January 2014 by Callenders & Co.

18. The Body Corporate and the 2005 Directors applied for interlocutory injunctive relief, which was heard by Barnett CJ, who granted the injunction on 6 January 2014 restraining the Prudden Group from convening their intended AGM on 12 January 2014 pending an *inter partes* hearing. The 2005 Directors also gave an undertaking not to convene their intended AGM on 16 January 2014.

19. The parties next appeared before Barnett CJ on 14 January 2014 for the *inter partes* hearing. On that occasion, the Nassau Action and the Freeport Action were ordered to be heard together and tried summarily on pleadings as they stood at that time, along with any affidavit

evidence (it having been agreed by all Counsel at that time that cross-examination was unlikely to be necessary).

20. At the scheduled summary trial of the Actions on 21 February 2014, Attorney Carey Leonard appeared on behalf of the Defendants to the Nassau Action and Attorney Dennison and Carey Leonard appeared jointly for the Plaintiffs in the Freeport Action. The summary trial was adjourned by agreement between the parties on terms set out in the Order the Chief Justice made on 21 February 2014 ("the February Order"). The terms of the February Order were, *inter alia*:

> (1) that the 2005 Directors were to convene an AGM of the Body Corporate on or before 28th March 2014 in accordance with the Act, the Declaration and the Byelaws therein ("the Court Ordered AGM");
>
> (2) that the Prudden Group were to provide an accounting of the Withheld Money collected by them as of that date along with supporting documents and exhibited to a verifying affidavit within 14 days of the date of the Order;
>
> (3) that any and all bank accounts controlled by the Prudden Group and containing the Diverted Funds, or any portion thereof, be frozen with no withdrawals or other disbursements from the account to be made without the prior written consent of Mr. Maurice Glinton.

Prior to adjourning the hearing, Barnett C.J. indicated that there would need to be "*an accounting if [the Prudden Group] had dispersed monies improperly*" and further that "*if monies were paid to [Attorney Dennison], she would have to account*." [Transcript of 21 February 2014.]

21. On 14 March 2014, an Affidavit sworn by Accountant Ellison Delva ("the Delva Affidavit") was filed on behalf of the Prudden Group, exhibiting unaudited accounts ("the Delva Accounts") detailing and admitting the incomings and expenditures made from the Diverted Funds. Of particular note within the Delva Accounts, was the Prudden Group's expenditures from the Diverted Funds in the amount of $39,881.59 and $30,764.56 to Dennison & Co. and Callenders & Co., respectively, for their personal legal representation, totaling $70,646.15 during the period from April 2013 to February 2014. The Delva Affidavit (later supplemented by the Affidavit of Debra Edwards filed 18 March 2014) also revealed that on 30 June 2013, the Prudden Group had caused a bank account to be opened at Bank of The Bahamas in the name of "Lucayan Towers South Condominium" ("the BoB Account"), into which they had deposited the balance of the Diverted Funds, and had encouraged other Unit Owners to pay their maintenance assessments into that account.

22. On 28 March 2014, the Court-Ordered AGM was convened in accordance with the February Order. Prior to that AGM, the 2005 Directors sent out proxy forms attached to the Notice of the AGM, which expressly stated that those proxy forms should be returned to the Resident Manager in advance of the Meeting, and that Unit Owners should ensure that they were current in

all of their maintenance assessments prior to the meeting to ensure that they would be eligible to vote.

23. At the said Court-Ordered AGM, Debra Edwards (a member of the Prudden Group) produced a number of proxy forms which were not those approved and sent out by the 2005 Directors, but which she claimed were signed by various Unit Owners for use at that AGM.

24. Mr. Glinton, as President of the Board of Directors, acted as Chairman of the Court-Ordered AGM, pursuant to the provisions of the Byelaws, and ruled the unverified proxy forms to be unacceptable for the purposes of establishing quorum. Quorum not having been met within the prescribed time under the Byelaws, the Chairman adjourned the Court-Ordered AGM to a week thence, in compliance with Article III clause (3)(c) of the Byelaws.

25. Disgruntled by the decision of the Chairman, the Prudden Group, with the support of some other persons present at the Court-Ordered AGM, moved to continue the AGM after the Chairman and other Unit Owners had left the Meeting Room and thereafter purported to elect another Board of Directors (consisting of Unit Owners Julie Glover, Laura Smith, Yasmin Popescu, Todd Kimball, Maurice Mousseau and Debra Edwards ("the Glover Group/Interim Directors"), as well as non-Unit Owner Catherine Zervos, and thereafter to ratify the Purported EM and the actions of the Prudden Group since the Disputed EM.

26. On 4 April 2014, the 2005 Directors reconvened the Court-Ordered AGM adjourned on 28 March 2014. At the reconvened AGM a Board of Directors was elected, consisting of Maurice Glinton, Michaela Storr, and Godfrey Bowe ("the Current Directors").

27. On 23 April 2014, a Notice of Change of Attorney was filed indicating that Tynes & Tynes had been appointed to act as Counsel for "*the Defendants in the Nassau Action and for the Plaintiffs in the Freeport Action in place of Dennison & Co*." Thereafter, neither Carey Leonard nor Attorney Dennison appeared on the record as Counsel for the Prudden Group or Attorney Dennison.

28. The parties appeared again before the Chief Justice on 29 April 2014 for the hearing of an application by the 2005 Directors for committal of the Prudden Group and Attorney Dennison, on the grounds that they had failed to comply with the February Order. At that time Barnett CJ made another Order ("the April Order"), the terms of which were, *inter alia*:

> (1) that the Prudden Group within seven (7) days produce bank statements for the bank accounts holding the [Diverted Funds];
>
> (2) that within 21 days the Prudden Group comply with the 21 February Order and produce a full accounting exhibited to a sworn verifying affidavit of at least one of the Prudden Group;

(3) that the parties attend before him on 13 May 2014 to present oral arguments regarding the Court Ordered AGM and, in particular, the issues raised as to the validity of the purported election of the Glover Group ("the Discrete Issue").

29. The parties attended on 13 May 2014 and presented oral arguments on the "Discrete Issue" before Barnett CJ, who reserved his decision.

30. On 19 June 2014, the parties attended before Barnett CJ on the hearing of the 2005 Directors' renewed application for a mandatory injunction requiring the Prudden Group to produce and deliver up to the Body Corporate all the Diverted Funds and to repay the $70,646.15, which was admittedly spent by them on personal legal fees.

31. Barnett CJ declined to hear the injunction application and instead informed Counsel for the parties that he intended to give Judgment on the Discrete Issue, and that he would be circulating a draft of his intended Judgment to Counsel prior to formally pronouncing it. That evening, Counsel received the Draft Judgment via email.

32. Barnett CJ formally pronounced Judgment in open court on 21 July 2014 ("the July Judgment"), of which the following paragraphs are relevant:

> "16. It is difficult to see how [the Disputed EM] could be said to have been a meeting of the [Body Corporate]. It was not and does not purport to be such a meeting. There is nothing to suggest that it was a meeting called by the Board as a result of a request by 25% of the Unit owners as provided in Article III(4)(c) of the Bye-laws. The persons elected at that meeting could not be said to have replaced [the 2005 Directors]. I cannot find that those persons who were elected at that meeting replaced [the 2005 Directors].
>
> […]
>
> 48. In my Judgment, the persons elected at the meeting on 28th March, 2014 who are Unit Owners were validly elected and constitute the Board of Directors of the Association as at that date.
>
> 49. This finding should in my view go a long way towards resolving this dispute. Although [the 2005 Directors] were right to challenge the election of January 2013 (which I have found could not have and did not replace them) I can see no merit in [the 2005 Directors] wanting to continue in office against the wishes of the majority of Unit Owners. The [Prudden Group] were not the directors of the Association from 8th January, 2013 to 28th March 2014. [The 2005 Directors] were still the directors during that period. The claim by [the Prudden Group] against [the 2005 Directors] in [the Freeport Action] cannot succeed. The claim by [the 2005 Directors] against [the Prudden Group] in [the Nassau Action] may be academic as the new Board may determine that there is little merit spending the [Body Corporate's] funds in pursuing

the claims in that action any further. I will hear the parties as to the further conduct of these actions as a result of this ruling."

33. Barnett CJ instructed Counsel for the 2005 Directors to produce an unfiled Summons containing the Orders they intended to apply for in light of the findings in the July Judgment by the next day, 22 July 2014, on the undertaking that such Summons would be filed shortly thereafter. This Summons was so delivered and was filed and served on 24 July 2014 ("the July 2014 Applications") seeking, *inter alia*:

i. the recall of the July Judgment; or alternatively,

ii. leave to appeal the July Judgment; and, in any event,

iii. Certain consequential orders which, the Appellants submitted necessarily followed from the findings at paragraphs 16 and 49 of the July Judgment ("the Consequential Orders"), including:

a) an Order that the Freeport Action be struck out and/or dismissed;

b) an Order declaring that the Prudden Group neither collectively nor individually had lawful authority to collect, receive, withhold, retain, pay out, disburse or otherwise appropriate howsoever money representing levied maintenance assessments property of the Body Corporate;

c) an Order declaring that Prudden Group neither collectively nor individually having any lawful authority whether in their own name or in the name of the Association to open and operate the BOB Account;

d) an Order declaring the Prudden Group were individually responsible for payment of their own legal fees and expenses and were not entitled to appropriate any of the Diverted Funds for that or any other purpose or purposes;

e) An Order declaring the Prudden Group jointly and severally liable for repayment to the Body Corporate of the Diverted Funds;

f) An Order for an inquiry and account;

g) An injunction restraining the Prudden Group and Attorney Dennison from "*disposing of or in any way dealing with* [the Diverted Funds] *without the consent in writing of* [the 2005 Directors]."

34. On 28 July 2014, a Notice of Change of Attorney was filed by the law firm Tynes & Tynes, purportedly on behalf of the Body Corporate, thereby creating the appearance, at least, that the Firm was acting for both the First Plaintiff Body Corporate and the Defendants in the Nassau Action.

35. The July 2014 Applications proceeded on 31 July 2014 and the Chief Justice reserved his ruling. On 28 January 2015, the Chief Justice pronounced Judgment ("the January 2015 Judgment") and made certain Orders ("the January Order"), namely, *inter alia*:

(1) granting leave to appeal to both parties;

(2) staying all proceedings in and in connection with the actions, save for any appeals therefrom, pending the determination of any such appeals;

(3) granting liberty to the Glover Group to continue management of the Body Corporate pending determination of any appeals;

(4) restraining the parties from convening AGM's pending determination of the appeal;

(5) requiring the Prudden Group to deliver up to the plaintiff bank statements for the BoB Account; and

(6) restraining the Prudden Group and Attorney Dennison from *"making use of any money or other assets of the Body Corporate for the purposes of paying, securing or otherwise negotiating the payment of their legal fees incurred or to be incurred in connection with these actions or any appeals in connection with the said actions until further Order."*

36. The Body Corporate and the 2005 Directors (collectively "the Appellants") appealed against the entirety of the July Judgment, save for the findings at paragraphs 16 and 49. The Prudden Group and Attorney Dennison (collectively "the Respondents") did not appeal against any part or any finding of the July Judgment or the January Order.

37. During the approximately two and a half years after the filing of the Notice of Appeal Motion in which the Glover Group/Interim Directors managed the Body Corporate's affairs, several disputes arose between the parties as a result of certain of their actions. These included:

i. The termination of various employees of the Body Corporate;

ii. The termination of the Resident Manager and purported elimination of the Office of the Resident Manager;

iii. The creation and appointment of a Director of Operations;

iv. The purported addition of certain individuals said to be acting as members of the Board of Directors of the Body Corporate without leave of the Court;

v. A number of contentious interactions between supporters of the Prudden and Glover Groups and Mr. Maurice Glinton;

vi. The severing and disconnection by the members of the Glover Group of the private standby power generator belonging to Mr. Glinton, which resulted in him making an *inter partes* application to the Supreme Court heard by the Hon. Mrs. *(Acting)* Justice Petra Hanna-Weekes (as she then was) ("Hanna-Weekes J") who, on 4 October 2016, made an Order restraining the Glover Group from further interfering and requiring them to permit Mr. Glinton to reconnect his generator;

vii. The advertised sale by the Glover Group of a Unit beneficially owned by Mr. Glinton, which resulted in an *inter partes* application to the Supreme Court heard by Hanna-Weekes J, who on 4 October 2016, made an Order restraining the Glover Group from further advertising the said Unit for sale.

38. The first appeal in these Actions was heard between 24 October 2016 and 26 April 2017, and Judgment rendered by the Court of Appeal on 4 September 2017 ("the CoA Decision") allowing the appeal and *"[setting] aside the decision of the CJ save and except for paragraph 49 thereof"*. The Court of Appeal further held that "*on 11th April 2014 an election purportedly took place and a new Board was elected which consisted of Maurice Glinton, Michaela Storr, and Godfrey Bowe*."

39. Before the Court of Appeal, Counsel for the Appellants asked the Court to make the Consequential Orders they had sought from the Chief Justice, some of which are now the subject of this action, including an Order for repayment of monies the Prudden Group admittedly spent on their own legal expenses. The Court of Appeal declined to do so.

40. On 22 September 2017, the Respondents filed a Notice of Motion seeking leave to appeal the Court of Appeal's decision to Her Majesty's Privy Council ("HMPC"). That application was refused by the Court of Appeal in an oral decision dated 4 December 2018. The Respondents did not apply to HMPC for special leave to appeal.

41. Following the Court of Appeal's Decision, the Current Directors assumed office, and upon taking control of the Body Corporate's Manager's Office discovered (as detailed in the affidavit of Maurice Glinton filed 13 November 2017) the following:

i. That the Glover Group had caused to be opened and maintained a second bank account at Bank of The Bahamas in the name of "Lucayan Towers South 2014" and later a bank account at RBC Royal Bank of Canada in the name of Lucayan Towers South Condominium Association ("the RBC Account") without permission from the 2005 Directors or the Court;

ii. A Further payment from the BoB Account to Dennison & Co in the amount of $14,931.99 on 10 September 2014;

iii. Six (6) payments from the BoB Account to Tynes & Tynes totaling $26,521.50 between 12 September 2014 and 28 March 2017;

iv. The purported sale of various Units within the Body Corporate by the Glover Group without permission of the Court, the proceeds of which sales the Current Directors cannot account for.

42. As mentioned, this did not end the disputes between the parties, which have since then persisted in this Court and the Court of Appeal, manifested in various satellite litigation connected to the dispute.

43. For example, on or about 27 October 2017, a bundle of documents was delivered to the Current Directors purporting to be a written request for their removal as members of the Board of Directors, alleged to have been signed by 57.51% of the Unit owners of the Body Corporate ("the Bundle"). Based on this, Julie Glover, a member of both the Prudden and Glover Groups, took physical steps to occupy the Resident Manager's Office, including by changing the locks, which was resisted by the Current Directors and the locks re-changed later that same day. However, this led to another round of litigation, which was productive of a decision of Mrs. Justice Petra Hanna-Adderley on 14 February 2018, refusing interlocutory and other injunctive relief sought by the Applicants to restrain the Glover and Prudden Groups from interfering with their functions as the Board and to restrain them from calling any AGMs. The Judge's refusal of this relief gave rise to Civil Appeal No.00037 of 2018 ("the 2018 Appeal"), and the Court of Appeal delivered its ruling in that Appeal on 5 June 2019, allowing the Applicants' appeal against the Ruling.

The Current Application

44. The current application before the Court was commenced by Summons filed on behalf of the Plaintiffs in the Nassau Action and the Defendants in the Freeport Action (collectively "the Applicants") on 3 April 2018, although it appears that a materially similar summons was filed 9 November 2017. The 2018 Summons sought the following reliefs, which I will set out in full:

"(1) An Order granting the Applicants leave to enter final Judgment in some or all of the claims indorsed on the Writ of Summons filed to commence the said Nassau Action and the Originating Summons filed to commence the said Freeport Action (collectively, "the

Actions") pursuant to R.S.C. Ord. 14, Ord. 31A, r. 18(2) (i) and the inherent jurisdiction of the Court (consequential upon the Judgment of the Court of Appeal delivered in civil appeal 2015/SCCiv.App. No. 0007 and dated 4th September 2017 wherein it upheld the Applicants' appeal), with damages, interest and costs awarded to the Applicants to be paid by Julie Glover, Douglas Prudden, Yasmin Popescu, Linda Carroll-Strachan, Debra Edwards, and/or Tiffany Dennison ("the Respondents"), personally, jointly and severally, including, *inter alia*:

(i) The sum of $112,16896 which without lawful authority or right the First Defendants in the Nassau Action appropriated to their own use to pay legal fees and expenses they incurred with various attorneys (including the Second Defendant), being cash and the proceeds of cheques and other negotiable instruments ("the said assets") property of the First Plaintiff the First and Second Defendants first diverted and withheld from the Plaintiff in the Nassau Action and once in the said Defendant's possession and/or control since some date prior to 14th December 2012, to the present.

(ii) delivery up by the Defendants in the Nassau Action to the First Plaintiff of the said assets forming balances standing in credit in accounts Nos. 1750000171 I/N/O in the name of Lucayan Towers South Condominium and 750000200 I/N/O operated in the name of Lucayan Towers South Condominium Association at RBC Royal Bank of Canada (Freeport) on which accounts one or more of the said Defendants were signatories;

(iii) payment of the total sum and said credit balances forming the said assets and property being money had and received to the use of the First Plaintiff;

(iv) damages as against the said Defendants and each of them for their wrongful detention of the said assets and part or parts thereof, or, alternatively, or conversion of the said cheques and negotiable instruments;

(v) An accounting by the said Defendants for all property of the First Plaintiff now or once in their possession and/or control since prior to 14 December 2012 up to date of hearing.

(vi) damages against the said Defendants and each of them (to be assessed) for wrongful interference with the First Plaintiffs' assets and said property, and the withholding thereof;

(2) An Order pursuant to R.S.C. Ord.43, r. 4.2 that the Respondents (and each of them) account for what they did with the said assets or their whereabouts, and for all necessary and proper inquiries and directions for the taking of such account;

(3.) an Order pursuant to R.S.C. Ord. 37 for an assessment of damages on account of any loss the Applicants would have sustained by reason of the said

Respondents' wrongful detention and withholding of the said assets and property now or once in their possession or custody or under their control.

(4). an Order pursuant to R.S.C. Ord. 29, r. 1 prohibiting the Respondents and each of them whether by themselves or their proxies or nominees from interfering with the office, spaces and equipment and other faculties and means of the current or future members of the Board of Directors and their authorized agents and employees of Lucayan Towers South Condominium Association ("the Body Corporate") in carrying out their duties and responsibilities in accordance with the Declaration of Condominium and Bye-laws of the Body Corporate and the provisions of the *The Law of Property and Conveyancing (Condominium) Act, 1965* ("the Act").

(5.) an Order pursuant to R.S.C. Ord. 29, r. 1 prohibiting the said Respondents (and each of them) from nominating themselves or accepting any nomination or appointment of membership of the Board of Directors of the Body Corporate until such time as the damages, interests and costs awarded are payable by the said Respondents in these actions are repaid in full; and

(6). an Order pursuant to R.S.C. Ord. 31A, rr. 26 and 18(2) (s) that the Notice of Change of Attorney filed on 28th July 2014 be struck from the record on the grounds that such document is an abuse of the court's process and is otherwise scandalous, frivolous and vexatious.

(7) an Order pursuant to *R.S.C. Ord. 43, r 2(1)* that Julie Glover, Catherine Zervos, Yasmin Popescu, Debra Edwards, Todd Kimball, Maurice Mousseau, and Laura Smith, having been at liberty to manage the affairs of the Body Corporate, and having acted upon such liberty, do provide an account of their tenure, including the receipt, current whereabouts and/or disposal of any money, assets, or other property of the Body Corporate once or now in their possession or control, and any actions taken by them in the course of such management."

45. The Applicants also sought an order for the costs of and occasioned by the application to be personally paid by the Defendants to the Nassau Action (collectively "the Respondents").

The Affidavit(s) of Debra Edwards

46. In the course of the hearing, affidavits were filed by Debra Edwards on 13 and 26 June 2024, respectively (collectively "the 2024 Edwards Affidavits"), although the latter affidavit purported to be an "amended Affidavit", which added a paragraph missing from the first affidavit and augmented several paragraphs. The Applicants applied to strike out the Affidavits, in whole or in part, by Notices of Application filed on 20 and 26 June 2024, respectively, pursuant to R.S.C. Ord. 2 rr. 1(2) and 2, Ord. 31A r. 20(1) and Ord. 41 rr. 1(4), 1(5), 1(6), 5 and 6 or, alternatively, pursuant to Part 30.2 (b), (c), and (d) and Part 30.3 (1), (2), and (3) of *The Supreme Court Civil*

Procedure Rules, 2022 (the "CPR"), and the Court's inherent jurisdiction. The grounds relied on were that the Affidavits: (i) are noncompliant in substance and in form with the provisions of the Rules of the Supreme Court and the CPR; (ii) refer to hearsay evidence, opinions and beliefs, without stating the source of such evidence, opinions or beliefs; and/or (iii) are irrelevant, an abuse of process, scandalous, and/or frivolous.

47. I will return to these affidavits when discussing the summary judgment claim. But for now, it will suffice to note that I did not exercise my discretion to strike out the offending portions of the affidavits, even though there was merit in the Applicants' claim that they violated both the "substance and form" of several provisions of the Rules. In this regard, it is trite that the court has a very wide discretion in deciding how to treat evidence which might fall foul of the Rules. As said by Hall J. (as he then was) in **McMillen Trust (trustee of) v Rawat** (Equity Action 1407/1990), applying the judgment of Peter Gibson J. in the **Savings and Investment Bank Ltd. v Gasco Investments (Netherlands) BV** [1988] Ch. 422: "…*where an affidavit…contains any matter which it ought not to contain, the court only need ignore the offending matter unless the breach is egregious*."

48. This is not to suggest that several of the deficiencies were not worthy of sanction. But having regard to the long gestation of this matter, and the nature of the claims being made, I was not prepared to strike out any of the evidence filed in objection to the claim. Further, notwithstanding the application to strike out, the Applicants in their brief written submissions in support of the application reserved the right to rely on any admissions contained in the affidavits, (per the dicta of Jessel MR in **Ex parte Hall** [1882] 19 Ch. D. 580, at 583).

ANALYSIS AND DISCUSSION

The Relevant Legal Principles

The test for summary judgment

49. The principles to be applied on an application for summary judgment are trite and do not require great elaboration. Order 14, r. 1 of the Rules of the Supreme Court 1978 ("R.S.C") provides as follows:

> "(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such claim or part except as to the amount any damages claimed, apply to the Court for judgment against that defendant."

50. This is augmented by r. 3(1), which provides that:

> "3(1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there

> ought for some other reason to be a trial of that claim, the Court may give such judgment for the plaintiff against that defendant on that claim or part of as may be just having regard to the nature of the remedy or relief claimed."

51. It is well established that the court will carefully guard the Ord. 14 jurisdiction, as the effect of a successful application is to deny the defendant his ordinary right to have a trial. As pointed out by Charles J. in **Higgs Construction Company v Patrick Devon Roberts and another** [2020] 1 BHS J. No. 9 (paras. 26, 27):

> "Under O. 14 r 5, the test to be applied by the Court is whether there is any "triable issue or question" or whether "for some other reason there ought to be a trial". If a plaintiff's application is properly constituted and there is no triable issue or question nor any other reason why there ought to be a trial the Court may give summary judgment for the plaintiff.
>
> "It is a well-established principle of law that the Court ought to be cautious since it is a serious step to give summary judgment. Nonetheless, a plaintiff is entitled to summary judgment if the defendant does not have a good or viable defence to his claim. This is also in keeping with the overriding objective of Order 31A to deal with cases justly by saving unnecessary expense and ensuring timely and expeditious disposal of cases. It is also part of the Court's active case management role to ascertain the issues at an early stage and to decide what issues need full investigation at trial and to dispose summarily of the others."

52. As to the approach of the court in determining Ord. 14 proceedings, it is also useful to bear in mind the observations of Ackner LJ in **Banque de Paris et des Pays-Bas (Suisse) SA v de Naray** [1984] 1 Lloyds Rep. 21, where he said:

> "It is of course trite law that Order 14 proceedings are not decided by weighing the two affidavits. It is also trite that the mere assertion in an affidavit of a given situation which is to be the basis of a defence does not, *ipso facto,* provide leave to defend; the court must look at the whole situation and ask itself whether the defendant has satisfied the court that there is a fair or reasonable probability of the defendants having a real or bona fide defence."

This test was subsequently endorsed by the UK Court of Appeal in **National Westminster Bank plc v Daniel** [1994] 1 All ER 156.

53. In addition to the legal principles set out above, the ability to obtain summary judgment is also subject to several procedural requirements (O. 14, r. 2(1)). The application must be made by Summons, supported by an affidavit verifying the facts on which the claim is based and asserting that there is no defence to the claim or any part of it. It is also axiomatic that on a summary judgment application, the court must take into account not only the evidence placed before it, but also the evidence that can reasonably be expected to be available at trial.

Order 31A, Rule 18(2)(i)

54. This Rule provides as follows:

> "Except where these Rules provide otherwise, the court may dismiss or give judgment on a claim after a decision on a preliminary issue."

Order 31A ("Case Management Powers") was introduced into the R.S.C. 1978 by an amendment in 2004. It superimposed modern case management rules adopted as part of a sweeping change to the civil procedure rules in the United Kingdom. Rule 18(2)(i) mirrors what is now CPR 3.1 (2)(m) of the UK Civil Procedure Rules, and the equivalent Rule has been continued in the CPR 2022 as 26.1 (2)(i), under the rubric of the Court's Case Management Powers.

55. There is scant jurisprudence on this Rule, but it clearly provides the court with the ability under its case management powers to dismiss a case or give judgment on a claim after a decision on preliminary issues. To the extent that it provides the court with the power to decide or dispose of a claim without a trial, there is some overlap between the power to dismiss under Order 31A, Rule 18(2)(i) (now 26.1) and Ord. 14 (summary judgment), which is now Part 15 of the CPR (Part 24 of the UK CPR) (see, **Walsh v Hall** [2015] EWHC 1759, at 36-38). One significant difference, however, is that the court will not grant summary judgment if there is some other compelling reason why the matter should be dealt with at trial, even in a case where there is no viable defence.

56. Another point, which is of some significance (although it was not raised before me), is that the Court's powers of case management and the duty to actively manage cases with a view to achieving the overriding objective of ensuring that cases are managed justly and efficiently, does not end at the Case Management Conference and pre-trial review. This duty and the attendant powers extend throughout the trial process, enabling the court to make the necessary orders at any stage of the trial to efficiently manage the case in accordance with the overriding objective. For example, it is to be noted that these powers are given in *addition* to any powers given to the Court by any other rule or practice direction, or any enactment or the court's inherent powers to manage its process.

The Parties' Contentions

<u>The Applicants</u>

57. The Applicants contend that, in light of the previous court decisions, particularly the 2017 CoA Decision, the Freeport action was conclusively determined and many of the issues in the Nassau action must also be regarded as having been determined.

58. With respect to the Freeport Action, it was submitted that as the entirety of the relief sought arose out of the claim that the Prudden Group was properly elected at the 9 January 2013 EM, the finding by Barnett CJ that it was not a valid meeting, which was upheld by the Court of Appeal, exploded any basis for that claim or the relief sought. For her part, Ms. MacDonald KC (quite properly) did not resist this argument and accepted in oral submissions [transcript of 13 May 2024] that:

> *"[A]fter I read the decision and looked back at the Originating Summons, I cannot argue against what my Learned Friend is saying because, again, all of the declarations that were sought, I think, were dealt with between the Court of Appeal and also [Chief] Justice*

Barnett. So, I cannot legally argue that there is something left in that action…in the Originating Summons, for a determination by this Court."

59. Thus, it is contended that only the Nassau action is outstanding. The Applicants submit further that many (if not all) of the issues raised in that Action have been determined by the earlier Rulings, or can now be summarily determined by this Court. This is based mainly on the contention that there were findings by Barnett CJ and the Court of Appeal that the Prudden Group was never validly elected as a Board, and therefore had no lawful authority to conduct the affairs of the Body Corporate.

60. Further, it is argued that the Respondents have no defence to the claims. In this regard, the Applicants submit that the 2024 Edwards Affidavits (which I shall come to presently) do not address any of the issues raised by the Summons, and do not assert or establish that there is any viable defence, or that there is any other reason why there should be a trial of the issues. Those affidavits, it was argued, simply contained admissions "…*already pleaded or averred to elsewhere and do not in any way condescend to addressing the issues before the Court*." The Applicants rely on several of the affidavits and other documents put before the court by the Respondents themselves on the basis that they either contain admissions or do not contradict the facts averred by the Applicants.

61. First, there is the affidavit of Douglas Prudden, filed 13 June 2013, in support of the Freeport Action, which the Applicants say contains evidence that the Respondents interfered with the assets of the Body Corporate. As set out in the factual background, that affidavit exhibits correspondence sent to CIBC by counsel for the Prudden Group, Attorney Dennison, seeking to gain access to the accounts of the Body Corporate, on the footing that they were the duly elected Board, and seeking to have the names of the 2005 Directors removed. In fact, after the Bank responded that it did not have any accounts in the name of "Lucayan Towers South Condominium Ltd.", the Prudden Group threatened that they would "…*proceed to commence action against the previous board and the bank as their accomplice*".

62. The Applicants submit that the mere fact that the Respondents were purporting to have been elected as the Board of the LTS Condominium Ltd. (as opposed to LTS Condominium Association), ought to have been a clue to them that they had, in essence, confused two distinct legal entities, even in respect of the calling of the EM on which their claim to constituting the Board is based in the name of the "Company". This is because the Body Corporate had been condominiumized as an Association and was not therefore a limited liability company since the Declaration of Condominium dated 4 October 1988. Further, it was averred in the main affidavit of Mr. Glinton in support of the summons filed in the Nassau Action, that Mr. Prudden, while purporting to be the President of the 2013 Board (the Prudden Group), simply occupied a unit in the Condominium, but was not a unit owner and therefore was not even qualified to be elected.

63. As mentioned above, the email circulated to unit owners on 5 April 2013 and the notice which was published in the local paper on 23 December 2013, are said to be further evidence and

admission of the Prudden Group's interference with the Association's affairs and assets. The essence of the email (which was circulated under the heading "Lucayan Towers South Board of Directors 2013") was as follows:

> "Dear Fellow Unit Owners,
>
> As most of you already know, the First Caribbean Bank has resisted giving your new Board access to the Lucayan Towers South's bank accounts. We are now preparing to bring this matter before the courts of the Commonwealth of the Bahamas. In the interim, and knowing how concerned you are about making timely maintenance fee payment, we have arranged with our law firm, Dennison & Co., account facilities where your maintenance fees can be paid temporarily. In addition to your board receiving monthly statements, this account shall be audited by Cates & Co., the auditing firm we have aligned with to perform the forensic auditing of the condominium's financial activities for the past five years. Each and every one of us deserves to know exactly how our money was used during that time period and to hold accountable all those persons entrusted with such funds."

64. The notice, which was published 23 December 2013 in the Freeport News, read in part:

> "The following persons have no authority to transact business for or in the name of the Body Corporate Lucayan Towers South Condominium Association; Maurice O. Glinton, Godfrey Bowe, Michaela Storr, Gordon Adderley [and] Wylma Bain… [resident manager, appointed position]. The new Board of Directors (2013/2014) Lucayan Towers South Condominium Association: Douglas Prudden-President; Julie Glover-Director; Linda Carroll-Strachan-Director; Yasmin Popescu-Secretary [and] Debra Edwards Neil-Director."

65. These and other initiatives, the Applicants say, created mistrust among the unit owners and the public as to who was the proper Body for collecting maintenance payments and dealing with the finances of the Body Corporate. They also illustrate that Attorney Dennison had ample notice that the capacity of the Prudden Group was being legally challenged, and that she should have exercised some prudence in certain of the actions she was taking on their behalf.

The Debra Edwards Affidavit(s)

66. Debra Edwards filed an affidavit on 13 June 2024 (an amended version was later filed on 26 June) in defence to the claim. They appear to have been made on behalf of all the defendants in the Nassau Action, as it was stated that the witness statement was: "…*made in support of the Defendants in the Nassau Action and also to state that at all material times the Board sought legal advice and acted with the full consent of the owners who were always informed of exactly what we were doing*."

67. As mentioned, objections were taken to the affidavits on various grounds, which included allegations that they included hearsay, opinion evidence and irrelevant and scandalous material. As noted, it was not that some of these claims were not without merit, but I exercised my discretion not to strike out for the reasons which have been given. However, in my view, the affidavits do not establish any reasonable defences or triable issues on the part of the Respondents.

68. For the purpose of this Ruling, it is only necessary to refer to the Affidavit filed 6 June 2024, as that superseded the earlier affidavit. The affidavit sets out, in somewhat vivid form, the events leading to the Extraordinary Meeting of 9 January 2013, in which the "2013 Board" were purportedly elected, and opines on matters involving the conflict "over the years 2013-2017", despite the fact that Ms. Edwards admits that she resigned from the Board in 2014 and moved out of the Property in the Fall of 2014 and returned to Canada. She also relates that she was in Canada between April and October 2013, although she purports to speak to matters which occurred during that period. Much of the affidavit is directed at personal allegations against Mr. Glinton, with whom she obviously did not share a cordial relationship.

69. In it, she relates how she and her husband came to purchase a Unit in 2012. Shortly thereafter, she was a part of a "working group" that called several meetings outside of the regular Board meetings over concerns about the Building and its maintenance. This led to the Extraordinary Meeting held 9 January 2013 which was convened on the basis that "…*having read the Act and realizing that only the Board can call an AGM, we decided to have an Extraordinary Meeting instead*." She relates the incident with the changing of the locks on 10 January 2013 and, following the Prudden Group's attempt to install themselves, the engaging of Attorney Tiffany Dennison, with whom the Board also agreed to open an escrow account to receive maintenance payments, after they were unable to change the signatories on the existing bank accounts at CIBC.

70. She also relates that Ms. Dennison retained Callenders and Co. "*to represent her against Mr. Glinton, and that he [the attorney from Callenders & Co.] was available to represent the Board along with her in the Supreme Court*". She deposed that the 2013 Board began paying various bills of the Association, and that an AGM called by the 2005 Directors for 8 January 2014 (which apparently was cancelled) was "ignored" on the advice of their lawyers. They subsequently received a letter from the law firm of Rawle Maynard & Co. indicating that an injunction had been granted prohibiting the Prudden Group from holding an AGM on 13 January 2014.

71. Following the Ruling of the Chief Justice in February 2014, the Prudden Group sought to clarify the issue of who was entitled to vote at AGMs in an email directed to the "Glintons" and the lawyers for the Prudden Group, which was copied to all unit owners. That email related in part that "…*we [the Respondents] saw nothing in the Lucayan Towers South Declaration of Condominium that an owner must be financially current to vote*". In March 2014, the accounts at the Bank of the Bahamas were frozen and she indicates that she was "reliably informed" (no source is given) that Mr. Glinton gained access to the accounts at both Bank of The Bahamas and RBC (Royal Bank).

72. I set out a few paragraphs below elliptically to give a flavor of the affidavit:

> "13. …We unanimously agreed to hold an AGM on January 9th 2013. Having read the Act and realizing that only the board can call an AGM, we decided to have an Extraordinary General Meeting instead.

22. Because we were elected by 61% of the owners after following the procedure in the Condominium Act we believed that we were legitimately representing the majority of the Condominium owners.

33. Upon the advice of our lawyers, we began to pay bills from the Bank of The Bahamas account. We paid $10,000.00 to Grand Bahama Power leaving a balance owing of about $70,000.00. Sanitation Services was paid $531.00. Grand Bahama Power Bath and Racquet Club $4,189.46, Lucy's Pool $5,753.50, Grand Bahama Utility $18,000.00 and Callender's retainer $5,000,00.

47. In my opinion Maurice Glinton at no point acted in the best interest of the building or the unit owners. Over the years from 2013 to 2017, the Owner Board which was faced with the same situation (*sic*) owners reluctant to pay maintenance fees, negotiated with those in arrears, managed to pay off major arrear to the power and water companies, repair balconies on a major section at the front of the building, replace one elevator and installed a fire alarm system."

73. As can be seen, this affidavit relates the contretemps and bad blood between the parties following the EM at which they were purportedly elected up to the events of 2017, when the 2005 Directors wrested back control after the fracas with the Bundle containing the requisitions. Apart from the personal attacks on Mr. Glinton, and allowances being made for perspective, it does not differ in substance from the account of the main facts given by the 2005 Directors, contained mainly in the various affidavits of Maurice Glinton. It admits that the 2013 Board took over the affairs of the Body Corporate, solicited and obtained maintenance fees and opened accounts for that purpose, as well as engaged and paid lawyers in connection with the litigation from the Diverted Funds. This was done, as related in paragraph 22 of the affidavit, on the belief that they had followed proper procedure and were legitimately representing the majority of the condominium owners. We now know, as found by the Court of Appeal, that they were not properly elected and therefore had no authority to do any of the acts they did in this regard. Thus, the affidavit does not disclose any defence to the application and, as previously mentioned, it does not even condescend to addressing any of the claims raised in the summons.

Earlier Rulings and Orders of the Court

74. To the extent that the Applicants rely on the earlier Rulings and Orders of the Court, it is useful to set out a birds'-eye-view of what they provided for, although these have been referenced in the narrative. For example, the 21 February 2014 Order of Barnett CJ provided, *inter alia*, as follows:

(i) "…a full and accurate account of all monies received and withheld by them representing levied maintenance assessments of Unit Owners of the Body Corporate and as to how, if at all, the aforementioned said money had been disbursed, transferred or otherwise disposed of…";

(ii) Freezing all bank accounts held or controlled by the Defendants in the Nassau action and containing monies received by the Unit owners until further Order;

(iii) An order restraining the Defendants from making use of any of the aforementioned money received by them from unit owners of the "Body Corporate" without the prior written consent of the first-named Second Plaintiff (Maurice Glinton); and

(iv) An order continuing the earlier Order dated 6 January 2014 (filed 14 January 2014), save as provided by the current Order.

75. In the 28 January 2015 Judgment, based on the summons heard on 1 August 2014, Barnett CJ made the following orders:

(i) leave granted to all parties to appeal the 21 July 2014 Ruling;

(ii) A stay of all further proceedings in both actions pending the appeal;

(iii) An order permitting the "persons whom I have found were duly elected at the 2014 meeting", namely Julie Glover, Yasmin Popescu, Debra Edwards, Laura Smith, Todd Kimball, and Maurice Mousseau, to be at liberty to continue the management for the time being of the Body Corporate pending determination of the appeals(s) or further Order.

76. More importantly, they ground their claim on the effect of the 2017 CoA Decision in the 2015 Appeal, which was to: (i) confirm the finding of Barnett CJ that the Prudden Group was not validly elected at the Disputed EM; and (ii) overrule the finding by Barnett CJ that the persons elected at the March 2014 meeting "*and who are Unit Owners were validly elected and constitute the Board of Directors*". What this meant is that neither the Prudden Group nor the Glover/Interim Directors ever had any right to manage the affairs of the Body Corporate.

77. As mentioned, there was a second appeal to the Court of Appeal by Notice of Motion filed 16 February 2018 against the refusal of the trial judge to grant an injunction against the Prudden Group to restrain them from interfering with the Current Board in the course of their duties and for holding general meetings of the Body Corporate (whether annual or extraordinary). The Court of Appeal allowed the appeal against the Judge's decision and held that the issues relating to the injunction had become academic, because the respondents to the appeal (the Prudden Group) had acknowledged that the Current Board had the exclusive legal authority to convene meetings of the Association (see, further, below).

78. The Applicants indicated to the court that their legal arguments were necessarily skeletal, as they were anchored mainly on the Rulings and Orders of the Court, which did not require much by way of explication, and to which the doctrine of *res judicata* applied. However, they did submit

three authorities setting out the principles relevant to restitutionary and equitable relief, none of which needs to be considered in any detail.

79. Firstly, they cited an extract from *The Law of Restitution*, 6th Ed. Sweet & Maxwell, Lord Goff of Chieveley, for the proposition that a defendant who intervenes without right between the plaintiff and a third party, which includes a usurper of an office, can be liable to an accounting or for monies had a received. **Gas Del Tropical S.A. v Paso Del Norte International Ltd**. [1988] BHS J. No. 120, was cited for the principle that a plaintiff who commences an action that he is not empowered to do or where he lacks competence, will be struck out, and that the attorney who acts on behalf of such a plaintiff might be liable in costs (per Georges, CJ). The third authority relied on by the Plaintiff was the Privy Council case of **Royal Brunei Airlines SDN. BHD. v Tan Kok Ming** [1995] 2 A.C. 378, for the principle that a third party who assisted a trustee to commit a breach of trust or fiduciary duties or procured him to do so, might be liable to the beneficiary for any loss occasioned by the breach, irrespective of whether he acted dishonestly or fraudulently. Their Lordships indicated that the test for accessory liability was an objective one, and acting with lack of probity, meaning not acting as an honest person would in the circumstances, could be equated with conscious impropriety.

<u>The Plaintiffs (Freeport Action)/Defendants (Nassau Action)</u>

80. The Respondents filed a summons on 15 April 2024 taking a preliminary objection to the *locus standi* of the 2005 Directors to maintain or continue any action on behalf of the Lucayan Towers South Condominium Association. This was based on the claim that the 2005 Board of Directors was "*effectively removed on the 16th September 2017 under the provisions of Bye-Laws V(8)(iv) of the Lucayan Towers South Condominium*".

81. I pressed Ms. McDonald KC as to whether this objection could be maintained in light of the finding of this Court in conjoined hearings Nos. 01354, 01355 and 01357 of 2020 (**Lucayan Towers South Condominium Association v. H. Godfrey Waugh, et. al**.) [Ruling delivered 7 March 2022], which were claims for summary judgment in respect of charges registered against several unit owners in the condominium. The very same objection was taken in that action and dismissed by this Court, based mainly on the effect of the Court of Appeal's 2017 and 2019 decisions. In any event, I invited counsel to make brief submissions on the point.

82. During the course of the hearing, Counsel elected to abandon this summons, which was therefore dismissed by the Court. But I deal with it for completeness, particularly having regard to the contentiousness of these issues between the parties.

83. At [66] of the 7 March 2022 Ruling, I set out the relevant provisions of the Declaration of Condominium:

> "(2) Election and Number of Board Members—The Board shall be elected at the first Ordinary Meeting of the Body Corporate after lodgment of this Declaration and in

every subsequent year at the first Ordinary Meeting of the year. They shall be elected for a year or until the next Annual General Meeting, or until their successors are duly elected or until the office is vacated as provided under this Article. Until otherwise determined by the Body Corporate in General Meeting the Board shall consist of not less than three (3) nor more than seven (7) Unit Owners.
[…]

(8) Vacancy, removal and disqualification—Subject as otherwise provided by this Article in respect to tenure, the office of a Board Member shall ipso facto be vacated:
(i) If he becomes bankrupt, or suspends payment, or commits an act of bankruptcy, or makes any arrangement or composition with his creditors.
(ii) If he becomes lunatic or of unsound mind.
(iii) If by notice in writing to the Body Corporate he resigns his office.
(iv) <u>If he is requested in writing by Unit Owners of the Body Corporate holding or representing more than one half of the total proportions of Unit Entitlement to vacate his office.</u>
(vi) In the event of the Body Corporate in General Meeting fixing shareholding or other qualification for Board Members, he does not acquire the amount of qualifying shares or other qualifications within three months of his appointment or election or if he ceases to hold the required amount of qualifying shares or other qualifications.

PROVIDED HOWEVER that the continuing Board Members may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this Article is the necessary quorum of the Board, the continuing Board members or Member may act for the purpose of increasing the number of Board Members to that number, or of summoning a General Meeting of the Company, but for no other purpose." [Underlining supplied.]

84. As mentioned, the factual background to this claim was that in late October 2017, unit owners allegedly comprising more than one-half of the total proportion of unit entitlements made a request in writing requiring the 2005 Directors to vacate office as Members of the Board of Management of the Lucayan Towers South Condominium. Copies of the purported requisitions were attached to the affidavit of Julie Glover, filed in those proceedings. As I said [at 70]:

> [70] I must indicate that I have great difficulty with the defendants' contentions that as a result of the 14 September 2017 resolution the current board is rendered without lawful tenure. Indeed, the defendants, through counsel, conceded before the Court of Appeal at the hearing that the appeal (which it may be recalled was against the refusal of the lower court to grant an injunction preventing the respondents from, *inter alia*, calling a general meeting for the conduct of elections) had by then been rendered academic as a result of actions taken by the respondents to the appeal. As counsel put it "… *my clients have taken a step in the Supreme Court which acknowledges that they cannot call an election. They cannot*

call an AGM. All they can do is seek an order of the court requiring the appellants to do what is necessary to cause the AGM to occur."

[71] The Court of Appeal agreed with this assessment and held that consequently the issue of the injunction had become academic (see para. 26 of the Ruling).

[72] The plaintiff contends that the above representations, and other statements made to the Court of Appeal during argument in the 2018 appeal (which are recorded in the Court's decision), demonstrate that the purported requisition and the notice of an AGM contained therein, were formally abandoned by counsel acting on their behalf. In fact, they say the objection only resurfaced when these proceedings were filed.

[73] Apart from any issue of abandonment of reliance on the 2017 requisition, I agree that it is not properly a matter for the adjudication of this court, for the reasons that follow. In SCCivApp. No. 7 of 2015, the Court of Appeal decided that the Glinton Board was the validly elected board of directors of the Association. The application for leave to appeal that decision to the Privy Council was dismissed by the Court of Appeal on 4 December 2018. In SCCivApp. No. 37 of 2018, the Court of Appeal found that the Glinton Board was well within its legal rights to seek an injunction preventing acts of interference with the performance of its corporate duties. It overturned in its entirety the decision of the trial judge, which was seemingly predicated on a finding that the effect of the requisition was to remove any cause of action in the Glinton board. In its ruling, the Court of Appeal affirmed that the Glinton Board was '*...merely preserving their right as the lawful directors of the Association to manage the Association's affairs and to obtain consequential relief prayed for in their Writ*.' "

85. In addition to relying on the Rulings, Ms. Glinton made the following points in opposition to the preliminary objection:

(i) that even aside from any question as to the effect of the purported requisitions, they were delivered in 2017, after the Court of Appeal's decision, while the writ in the Nassau Action was filed in December 2014, at which point the 2005 Directors clearly had authority, as decided by both the Supreme Court and Court of Appeal;

(ii) that in any event, the validity of the purported requisition was a question of law and fact that could only be determined by the Court, particularly as there were disputes over whether some of the persons who allegedly participated in this process were unit owners, and questions over the change of ownership of several units;

(iii) that the issue of the requisitions was never brought before the Court in the 2013 actions; and

(iv) that whatever the outcome of the requisitions, an AGM still had to be called to replace the Board, and there were injunctions in place preventing the holding of an AGM of the Body Corporate, both pending the determination of the appeal, and following the 2017 requisitions.

86. For these reasons, I do not think that there was any merit in this preliminary objection, which, as indicated, was in any event abandoned by counsel for the plaintiffs in the Freeport Action.

87. The Defendants made several disparate submissions in objection to the claim, which I will endeavor to summarize as follows:

(i) That the delay in filing the statement of claim (filed 6 March 2018, nearly five years after the filing of the writ) and in just now pursuing the applications is an abuse "and waste of judicial time" and should be dismissed;
(ii) Statutory Bye-Law 2(3) or Article V(5)(e) of the Declaration, which provides that all acts done in good faith by the Board are to have validity notwithstanding some defect in appointment or irregularity in the proceedings, could be invoked to validate the actions of the defendants.
(iii) That the proceedings are statute barred by s. 5(3) of the *Limitation Act*, which provides that an action shall not be brought after the expiry of six years from the date on which a judgment became enforceable;
(iv) That the various rulings of the Supreme Court and Court of Appeal disposed of the claims between the parties and that the 2018 summons is an attempt to "resurrect their Action"; and
(v) That the Defendants were authorized pursuant to the Ruling of Chief Justice Barnett to be at liberty to manage the affairs of the Association.

88. I will deal with each of these arguments in turn. However, I will say at the outset that I am not of the opinion that any of them asserts any meritorious defence to the claims, or a legal or factual issue which requires the trial of the action.

Delay and abuse

89. The Respondents' argument about the late filing of the statement of claim or the suggestion that the claims were abusive was not developed in any substantive way, and it was never said why the applications were an abuse of the court's process, or why they should be dismissed. It seems to me that the obvious answer to the late filing of the statement of claim is that in the Ruling of 28 January 2015, Barnett CJ stayed all further proceedings in the Actions pending the determination of the appeal. Therefore, any delay was a product of the judicial process and litigation in which the parties were involved. It cannot be laid at the feet of the Applicants. As mentioned, the Respondents did not appeal any of the Rulings of the Supreme Court, nor did they take any steps to seek to strike out or otherwise attack the writ, statement of claim or summonses filed thereunder. While, as noted, they entered appearances to the Writ of Summons and were represented in the hearings before Barnett CJ, they did nothing further and did not file any defences. The Applicants provided evidence in the affidavit of Samantha Bastian, filed 13 August 2024, that the Respondents' Attorneys were served with the Statement of Claim on 7 March 2018, one day after it was filed. In fact, the Plaintiffs might conceivably have sought orders for Judgment in default

of defence. I therefore do not perceive that there is any merit in the claims alleging delay or abuse.

Bye-Laws (Presumption of Regularity)

90. I also do not think that the Defendants are able to derive any assistance from Bye-law 2(3) as set out in the schedule to the *Law of Property and Conveyancing (Condominium) Act*, which is in substance incorporated at Article V(5)(e) of the Association's Bye-Laws. It provides as follows:

> "All acts done in good faith by the Board shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any member of the Board or some technical irregularity in the Board's proceedings, be as valid as if such member had been duly appointed or had continued in office or as if the proceedings were regular."

91. This section merely codifies the doctrine of presumption of regularity by providing for the actions of the board to be deemed valid despite any irregularities in the appointment of any members or its conduct. It is to be noted firstly, that this presumption can be rebutted by evidence of irregularities or breaches of duty. Secondly, the language speaks to a defect in the appointment of "*any*" member and preserves the validity of the proceedings as if "…*such member*" were duly appointed. In my view, this does not at all cover the situation where it is alleged that the entire Board was not properly constituted, and which was found to be the case by the Court of Appeal. In the circumstances, the presumption of regularity does not apply, as the Court of Appeal found they were not elected in accordance with the association's governing documents.

92. For example, in **Morris v Kanssen, sub nom Kanssen v Rialto (West End) Ltd.** [1946] AC 459, in construing the effect of s. 143 of the Companies Act 1929, which provides "*The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification*", Lord Simonds said:

> "There is, it appears to me, a vital distinction between (a) an appointment in which there is a defect or, in other words, a defective appointment, and (b) no appointment at all. In the first case it is implied that some act is done which purports to be an appointment but is by reason of some defect inadequate for the purpose; in the second case there is not a defect; there is no act at all. The section does not say that the acts of a person acting as director shall be valid notwithstanding that it is afterwards discovered that he was not appointed a director. Even if it did, it might well be contended that at least a purported appointment was postulated. But it does not do so, and it would, I think, be doing violence to plain language to construe the section as covering a case in which there has been no genuine attempt to appoint at all. […]
> The point may be summed up by saying that the section and the article being designed as machinery to avoid questions being raised as to the validity of transactions where there has been a slip in the appointment of a director, cannot be utilized for the purposes of ignoring or overriding the substantive provisions relating to such appointment."

Limitation Point

93. As to the claim on the limitation point, firstly, the summons was filed in 2018, based on the Ruling and directions of the Court of Appeal in 2017. Thus, to the extent that reliance is placed on either the July 2014 Ruling of Barnett CJ or the 2017 CoA decision, the limitation period of 6 years is not engaged. Secondly, the claims are not actions for the enforcement of a judgment. They are applications for summary relief and consequential orders based on findings of law or fact made in previous Rulings. For example, s. 118 of the *Evidence Act* provides that "*Every judgment is conclusive evidence against all persons of the legal results which it effects*". Further, s. 121(1) provides that a judgment is conclusive proof, in all subsequent proceedings between the same parties, of primary facts in issue between the parties, that is facts that were not collateral or incidental.

94. The findings of these Courts, unappealed or appealed without success, created a *res judicata* between the parties on the issues. As said in a leading text ("*The Doctrine of Res Judicata"*—Bower, George Spencer, et. al., 3rd Ed., Butterworths: London, 1996, p. 1):

> "1. In English law, a res judicata is a decision pronounced by a judicial tribunal having jurisdiction over the cause and the parties which disposes once and for all of the matters decided, so that except on appeal, they cannot afterwards be relitigated between the same parties. The effect of such a decision is two-fold.
>
> Parties estopped from averring to the contrary.
>
> 2. In every case the decision estops or precludes any party to the litigation or his privies from disputing, against any other party or his privies, in later litigation, the correctness of the earlier decision. The same claim cannot be raised again between them, and this principle extends to all matters of law and fact which the decision necessarily established as the legal foundation of the conclusion reached by the court."

Res judicata claim by Respondents

95. As to the claim by the Defendants that the actions between the parties are disposed of and *res judicata*, this view is clearly mistaken. One only needs to have regard to what the Court of Appeal said in its 2019 Ruling to appreciate that many of the issues raised between the parties remained outstanding at the point of that Ruling. This is what that Court said:

> "47. […] As we see it, had the learned judge examined the Writ of Summons as carefully as she should have done, she would have concluded that the appellants were not seeking a free-standing injunction as she erroneously thought. On the contrary, the appellants were merely preserving their right as the lawful directors of the Association to manage the Association's affairs and to obtain the consequential relief prayed for in their Writ. While this Court's Decision of 4 September 2017 undoubtedly settled the primary dispute as to which group of persons were the validly elected directors of the Condominium Association, it did not follow that there did not exist other serious issues and/or consequential claims remaining in the proceedings which would have grounded the grant of interim injunctive relief. Even the most cursory examination of the pleadings in the court

below reveals that there were numerous serious issues, claims and reliefs, still outstanding in the Nassau action which still remained to be heard and disposed of and which were consequential on this Court's having first settled the issue as to which group of persons was the validly constituted board entitled to manage and prosecute the Association's affairs.

48. As noted earlier, the relief sought in the consolidated proceedings in court below included an outstanding claim against the respondents for damages for the tort of conversion of the Association's property, and claims for a variety of relief in the form of various declarations, the production of bank accounts, bank account information and the proceeds of cheques and monies which were alleged to have been diverted to the respondents' possession and control during the time when they purported to act as the Association's directors. Additionally, as Mr. Glinton's affidavits in the Appellate Record clearly show, during the period when the respondents had intermeddled in the affairs of the Association, several units had been disposed of. Furthermore, before the second appellants could properly resume their duties as the validly constituted Board of Directors, a proper hand-over to the second appellants and a proper accounting of the Association's affairs and monies collected by the respondents had necessarily to be made. It also had to be determined, inter alia, who the current owners were; and secondly, which unit owners were financial and entitled to vote at the Associations' meetings. Also to be determined in the proceedings in the court below is what monies had been collected and expended by the respondents during the period when they purported to act as the Association's directors."

Liberty to Manage the Association

96. The Respondents (at least those who comprised the Glover Group and are represented before the Court) also rely on the fact that they were given liberty to manage the affairs of the Body Corporate by Barnett CJ in his 28 January 2015 Order to clothe their actions with some legal *imprimatur*. I must say that this particular issue caused me some anxiety, but I do not think it gets them off the hook. It is clear that the intent was to appoint a *de facto* Board to manage the affairs of the Body Corporate pending appeal. But it did not give them *carte blanche* to do as they pleased. First, it is to be noted that the January 2015 Ruling was subject to the February 2014 Order, which required Mr. Glinton (President of the Board which the Court's interlocutory Order ousted) to still approve the payments. The oddness of this position was recognized by the ousted 2005 Directors and in one of his many affidavits (this one filed 24 September 2014), Mr. Glinton averred, not uncritically, that:

"14. I say with respect, this is an absurdity in the guise of administered justice which, if it was intended by the Judgment, makes the law blind indeed. It cannot have been the intention (or even foreseeable by any standard of fairness or measure of justice) that a minority of Unit Owners must bear the cost of what is becoming an un-arrested decline in Lucayan Towers South Condominium Association Body Corporate's financial state, from calamitous to perilous, as a consequence of unmade consequential Orders that would hopefully clarify what, from the pronounced Judgment appears to make for incongruous if not irreconcilable outcomes at best."

97. Second, the fact that they were operating under leave from the Court did not relieve them of the duty to see that the affairs of the Body Corporate were properly conducted. In fact, implicit

in the Order for the accounting which was granted was the requirement to account for their financial stewardship of the Body Corporate's funds. I therefore do not see how this argument assists the Respondents, especially having regard to the nature of the claims, which sound mainly for an accounting and repayment of fees improperly paid for legal expenses.

Court's Discussion

The Freeport Action (No. 230)

98. As summarized above, this was a claim by the Prudden Group commenced by Originating Summons filed 28 May 2013 seeking three main reliefs: (i) a declaration that they were validly elected on 9 January 2013; (ii) an order to prevent the 2005 Directors interfering with the operations of the Association; and (iii) a declaration requiring the 2005 Directors to provide the Association's banking details and an accounting of funds collected by them for maintenance for the Property. Mr. Glinton entered a conditional appearance to the OS and later applied to have it struck out on the grounds that the Plaintiffs lacked standing (as detailed below), as well as sought security for costs on the grounds that the last-named defendant (Debra Edwards) was ordinarily resident out of the jurisdiction and that the Plaintiffs were nominal plaintiffs.

99. It will be recalled that in the Judgment of 21 July 2014, the learned CJ held, *inter alia,* that [at 49]:

> "The [Prudden] Group were not the directors of the Association from 8th January 2013 to 28th March 2014. [The 2005 Directors] were still the directors during that period. The claim by [the Prudden Group] against [the 2005 Directors] in the [Freeport Action] cannot succeed."

100. It seems that several summonses were filed to summarily dispose of the Originating Summons. For example, a summons was filed 27 June 2013 in Freeport Action (apparently by Mr. Glinton, *pro se*) which sought to have the OS struck out on the grounds that the Plaintiff lacked standing to bring the action in the capacity of Directors of the Body Corporate, which they were purporting to do. It was also based on the traditional *R.S.C. Ord. 18, r. 19* grounds as follows, that: (i) it discloses no reasonable cause of action; (ii) is frivolous and vexatious; and (iii) is an abuse of the process of the Court.

101. That summons was apparently not heard, and a similar summons was filed 24 July 2014, which sought, *inter alia*, an Order, pursuant to R.S.C. Ord. 18, r. 19 and/or Ord. 59, r. 2(2), that the "*Freeport Action be struck out with costs payable to the Defendants therein by the Plaintiffs therein on the grounds that, inter alia, it discloses no cause of action [as] the Plaintiffs were incompetent to bring the claim and/or in light of the Judgment, the action cannot be maintained*." In fact, that Summons sought all of the relief that the 2005 Directors sought against the Prudden Group in its writ in the Nassau Action. The summons was "heard" by the CJ on 1 August 2014, who affirmed the 21 July 2014 Ruling (which both parties were asking to be reconsidered and/or recalled) and stayed "*all further proceedings in both actions*" pending appeal.

102. The Court of Appeal overturned all but paragraph 49 of the 21 July 2014 Ruling. In essence, then, it has already been decided by the Supreme Court and affirmed by the Court of Appeal that the Freeport Action was stillborn, as the Prudden Group was not the legitimate Board and was therefore not legally competent to institute any claims. All that was left to be done was for the Court to make a consequential pronouncement dismissing or striking out the Action, which was ineluctable if the matter had proceeded to a hearing. So, I would dismiss that Action in its entirety.

The Nassau Action

103. The thinking of Barnett CJ, expressed at para. 49 of that Ruling, that the Nassau action "*may be academic*", based on his finding that the Glover Group was validly elected on 28 March 2014 and that they might therefore determine that there was no merit in incurring costs in pursuing the claims in that Action, was not realized. The Court of Appeal's decision eroded the basis for the finding and the subsequent Order permitting the persons who are "unit owners" purportedly elected on the 28 March 2014 to "*run the Association pending appeal*" ("the Glover Group/Interim Directors"). The matters which were therefore before the Chief Justice in the Nassau Action remained very much alive.

104. Having reviewed the relief sought by the Applicants and the affidavit evidence, as well as the material filed in objection by the Respondents, my findings on the relief sought in the Summons filed 3 April 2018 are as follows:

(1.) As to the Freeport Action, as indicated above, that matter has been dismissed in its entirety.

(2.) I grant the relief sought at 1(i) in relation to the claim for repayment of the sum of $112,100.14 used to pay legal fees and expenses. Of this amount, $70,646.15 was identified by CPA Ellison Delva of Cates & Co., in an Affidavit filed 4 March 2014 pursuant to the Court's Order of 21 February 2014, as legal fees spent by the Respondents. The remaining amount of $41,453.49 was uncovered in the accounts of the Body Corporate and are set out in the Affidavit of Maurice Glinton filed 13 November 2017 as follows:

> "20. […] A copy of the Ledger of the Body Corporate disbursement for legal fees…plainly show that even after the Glover defendant's counsel acknowledged their personal joint and several liability to repay money property of the Body Corporate they had used in this manner, at the hearings before the Chief Justice on 14th January and 21st February 2014, and after he made the Status Order on 28th January 2015, the Glover Group and Interim Directors who alone had access and control of money in bank accounts property of the Body Corporate continued to use its money for their personal needs over the relevant period to date, as shown in the following schedule:
>
> | Amount Paid | To Whom Paid | Date of Payment | Bank |
> |---|---|---|---|
> | $14,931.99 | Dennison & Co. | 10th Sept. 2014 | BOB |
> | $10,000.00 | Tynes & Tynes. | 12th Sept. 2014 | BOB |

$10,000.00	Tynes & Tynes.	22nd Jan. 2015	BOB
$ 806.25	Tynes & Tynes,	20th Jan. 2017	BOB
$ 3,000.25	Tynes & Tynes	20th Jan. 2017	BOB
$ 2,500.00	Tynes & Tynes	14th Mar. 2017	BOB
$ 215.00	Tynes & Tynes.	28th Mar. 2017	BOB

> […]
> 26. I verily believe that there is no defence in this action for the $112,1004. 14 sum (incorrectly stated in the said Summons at $112,168.69) save as to the amount of damage for withholding and misuse and misapplication of the Body Corporate's money and other property."

2.1 In the Order made 28 January 2015, Barnett CJ had ordered that the Defendants "*be and are hereby restrained from making use of the money or other assets of the Body Corporate for the purposes of paying, securing or otherwise negotiating the payment of their legal fees in connection with the said actions until further Order*." Implicit in this Order was a finding that the Defendants had no legal right to use this money for that purpose.

2.2 The Defendants have not challenged any of the assertions in the 2017 Affidavit and they stand uncontroverted. I accordingly find that there is no defence to this claim save for any question of damages, which can be dealt with at assessment.

(3.) As to the relief sought at (ii) - (v) and para. 3 of the Summons, these have effectively been determined, being orders in restitution for the repayment of the outstanding balances on the accounts that were opened by the Respondents and for damages (to be assessed) for "wrongful detention" and interference with the First Plaintiff Body Corporate's assets and property. All of these naturally flow from the findings of the Supreme Court and Court of Appeal that the Prudden Group was not the lawful Board in 2013, and neither were the 2014 Glover Group/Interim Directors ever validly elected.

(4.) The Order sought at paras. 2 and 7 for a full accounting of the assets, and for necessary and proper inquiries for that purpose, flow from the February 2014 Order for an accounting (which as indicated below the Applicants claim was never fully given), and the CoA Decision. The Order of 21 February 2014 provided that the Defendants (in the Nassau Action):

> "…shall within fourteen (14) days from the date of this Order produce and deliver up to the Plaintiffs in the Nassau Action (Defendants in the Freeport Action) a full and accurate account of all monies received and withheld by them representing levied maintenance assessment of Unit Owners of the Body Corporate and as to how, if at all, the aforementioned said money has been disbursed, transferred or otherwise disposed of by or on behalf of the Defendants (or any of them) after coming into their possession and control, along with accompanying receipts, exhibited to a sworn verifying affidavit, pursuant to R.S.C. Order 42 (sic)."

4.1 As related, in response, the Defendants filed the Delva affidavit on 4 March 2014, and later the Affidavit of Debra Edwards on 18 March 2014. The Delva Affidavit only covered the period from April 2013 to February 2014. Apart from the issues with non-compliance

within the timeline for compliance, which led to an application for committal, the Plaintiffs assert that the Order was never fully complied with, and the accounting never fully provided (Affidavit of Maurice Glinton filed 27 March 2013). In this regard, they submit, firstly, that what was exhibited to the Delva Affidavit were unaudited accounts, as acknowledged in that Affidavit, and that it was incomplete, as a considerable amount of documentation not provided in the 'unaudited accounts' was provided in the subsequent Affidavit of Debra Edwards. Even that affidavit failed to verify its account or accuracy and only referred to "…*the payments of maintenance fees by said Unit Owners, as reported by them to me, into an account set up under the name of Lucayan Towers South Condominium Association at the Bank of the Bahamas*…".

4.2 It was also alleged (in the main supporting affidavit) and other affidavits filed in connection with this dispute (for example, an affidavit of Maurice Glinton filed 21 June 2018 in the second appeal, 2018/SCCiv.App.No.00037,) that the Glover Group may have presided over the sale of several units transacted in the name of the Body Corporate, for which no accounts were provided (see, para. 48 of the Court of Appeal's 2019 Judgment, extracted above). During the course of the hearing, the Applicants laid over to the Court copies of four conveyances and three agreements for sale obtained from Tynes & Tynes (who it will be recalled represented the Respondents) in respect of 7 units (401, 504, 701, 712, 802, 910, and 1112), occurring between August and December of 2017. According to those documents, Unit 401 was sold for $8,000; Unit 504 for $35,000, Unit 701 for $8,000 and Unit 910 for $7,500. It is to be noted that while Units 401, 504, and 701 were conveyed on 28 August 2017, Unit 910 was sold on 29 December 2017, well after the Court of Appeal's 2017 decision indicating that the 2014 Glover/Interim Board was invalidly elected.

4.3 In addition to the remit of the 21 February 2014 Order, the Summons seeks at paras. 2 and 7 a general and current accounting. At 2, an Order is sought that the Respondents (and each of them) "*account for what they did with the said assets or their whereabouts, and for all necessary and proper inquiries and directions for the taking of such accounts*". The Order at 7 is directed to the Glover/Interim Board, and seeks an Order that…"*Julie Glover, Catherine Zervos, Yasmin Popescu, Debra Edwards, Todd Kimball, Maurice Mousseau, and Laura Smith, having been at liberty to manage the affairs of the Body Corporate, and having acted upon such liberty, do provide an account of their tenure, including the receipt, current whereabouts and/or disposal of any money, assets, or other property of the Body Corporate, once or now in their possession or control*…".

4.4 Again, these assertions were not contradicted or denied by the Respondents in this matter. To the extent that it might be suggested that any actions taken by them were done pursuant to liberty given by the Court to manage the Association during the pendency of the appeal, that cannot and does not negate an Order for accounting. I therefore do not see any basis on which the Respondents can resist the Orders for accounting, and I would so order.

(5.) To some extent, the Order sought at para. 4 prohibiting the Respondents from interfering with the legitimate Board of the Association in managing the affairs of the Body Corporate was before the Court of Appeal ruling in 2019. That Ruling was an appeal from the refusal of the relief sought by the Applicants by summons filed 7 November 2017, seeking, *inter alia*, interim injunctive relief to "…*restrain the respondents from interfering with the [2005 Directors'] duties as the lawfully elected board of directors of the Association; or from convening general meetings (whether annual or extraordinary) until further order*" [para. 16 of the CoA Ruling]. The Court of Appeal said as follows:

> "[24] As we saw it, the necessity for the injunctive relief sought in the Notice of Appeal to prevent the respondents holding a General Meeting was no longer of any immediacy. Furthermore, as Mr. Gomez Q.C., informed us, the threat of the respondents convening another meeting in the future was unlikely to arise again before the remaining issues in the court below are heard and determined inasmuch as the respondents had since acknowledged that the second appellants alone had the legal authority to convene meetings of the Association."

5.1 The Court of Appeal declined to exercise its discretion to grant an injunction on this basis, although it allowed the appeal against the Judge's decision refusing it in its entirety.

5.2 The Order sought at 5 is also injunctive relief to prohibit the Respondents from holding themselves out for nomination or appointment of membership of the Board of Directors of the Body Corporate until the "*damages, interest and costs awarded …payable by the said Respondents in these actions are repaid in full*".

5.3 Both of these paragraphs are effectively claims for injunctive relief, which were claimed in the original summons filed 9 November 2017 and repeated in the 8 April 2018 summons moving this court. I would have no hesitation in finding, given the history of the actions taken by the Respondents to interfere with the functions of the 2005 Directors and other actions to attempt to usurp the Office, that the Applicants have an interest that merits protection and that there are legal and equitable principles justifying the grant of an injunction, in keeping with the modern approach to the grant of injunctions (see **Lucayan Towers South v. Grand Bahama Utility Company et. al.**, 2018/CLE/gen/01480, supra).

5.4 However, the grant of injunctive relief is discretionary and the Court will not grant injunctions where the matter is academic or there is no longer any immediacy. Although the dispute between the groups still festers, the Applicants did not indicate to the Court that the Respondents or any of them had taken any recent steps to interfere with the management of the Body Corporate. In any event, there is a more substantive reason why I would not grant these reliefs. This is an application, *inter alia*, for summary judgment under R.S.C. Ord. 14, and such injunctions are for *final*, not interlocutory relief (see, **Shell-Mex & BP Ltd. v Manchester Garages Ltd**. [1971] 1 WLR 612. Thus, the Plaintiffs claim for an injunction must be one to which there is no defence.

5.5 In the first place, neither of the injunctions sought are perpetual; they are intended to last until further order or until certain events occur. In fact, it is unlikely that the court could grant perpetual injunctions of the nature sough against the Respondents. Secondly, neither the Applicants nor the Respondents specifically addressed any arguments to the issue of the injunctions. In all the circumstances of this case, I would decline to grant the injunctions. If the Respondents or any of them acts in a way contrary to the legal or equitable rights of the Applicants, then they are free to approach the court on an *inter partes* hearing for the necessary injunctive relief.

(6). As to para. 6, which seeks an order that the Notice of Change of Attorney filed 28 July 2014 be struck from the record on the grounds that such document is an abuse of process, that has already been determined. The Court of Appeal's Ruling determined that the Glover Group/Interim Directors were illegitimate. It therefore follows ineluctably from that finding that the Attorneys had no authority to issue the Notice on behalf of the Body Corporate, as they could only be instructed by the lawfully elected Board (see, **Gas Del Tropical S.A. v Paso Del Norte International Ltd**., *supra*). The Court granted this Order during the course of the hearing, but reserved costs for an application made for that purpose.

The Appearances Before the Court

105. I think there is one further issue which I need to mention, and that relates to the appearance and participation of several of the Respondents in this Action as follows: the Second Defendant, in the Nassau Action, Attorney Dennison; one of the named First Defendants in the Nassau Action Carroll-Strachan; and one of the named Plaintiffs in the Freeport Action, Chris Rolle.

106. On 22 April 2024, the Court made an Order for electronic service on all of the overseas and resident defendants at their ascertained email addresses or email addresses associated with them. Ms. McDonald KC appeared on behalf of the Defendants Julie Glover, Douglas Prudden, Debra Edwards and Yasmin Popescu. Linda Carroll-Strachan appeared at the hearings, held by Zoom, but did not take any part. It was related to the Court that her apparent disinterest was because "*she was never an owner*". In fact, this response perhaps illustrates in part why the Applicants so vigorously opposed the Originating Summons and other applications filed by the Prudden Group, as two of the six named Respondents were not even eligible to be elected as Members of the Board. I hardly need refer to the legal maxim that one cannot approbate and reprobate at the same time, that is to say, having participated in the activities of the Group managing the Body Corporate, it is not now possible to use the fact that one was disqualified *ab initio* from holding that office as a defence. In any event, the Defendants in the Nassau Action were sued in their personal capacities, and not as Members of the Board.

107. While he is not named as a defendant in the Nassau Action, for reasons that have been explained, Chris Rolle was a Plaintiff in the Freeport Action, and there was evidence adduced by

the Respondents of their attempts to serve him (see below). However, he did not respond and did not appear in the proceedings.

108. The Plaintiffs indicated that Attorney Dennison was informed of the hearing and application on 27 March 2024 by telephone and email, after the withdrawal of Harvey Tynes KC as counsel of record for the Defendants. She was also served with notice of the hearing on 29 April 2024. She appeared personally at the hearing on 13 May 2024, and indicated that her attorney was in another matter that day and could not attend. It was indicated to her that the Court would only be hearing the Plaintiff's preliminary objections to the Debra Edwards affidavits, and the matter was due to continue on 21-24 May 2024 (later adjourned), when the issues relating to her were likely to be raised. She indicated that she would remain at the hearing, but later "*without notice or explanation to the Court*" dropped out of the hearing. No further appearance was made by her or her counsel, and nothing was filed on her behalf. All of the efforts taken in notifying and effecting service on Ms. Dennison, and her "attorney" as well as the other parties are documented in an Affidavit of Maurice Glinton filed 7 August 2024.

109. I am satisfied that in all the circumstances of this case, the Second Defendant had ample and sufficient notice of the application to instruct counsel on her behalf, or appear *pro se*, if she had chosen to do so. These were very serious allegations being made against her personally, which were not novel or new, but in fact had been gestating for over 10 years and in which the parties had been back and forth to the Court of Appeal and the Supreme Court on many occasions. An appearance had been entered on her behalf. One would have thought that Senior Counsel would have been keen to have these matters resolved once and for all. Whilst every litigant is entitled to be given a reasonable opportunity to be heard, that is all he or she is entitled to. Failure to avail oneself of that opportunity can only be laid at the feet of the litigant concerned. Counsel and Attorney of the Supreme Court should appreciate more than most the Court's exigencies and the value of judicial and other parties' time.

CONCLUSION AND DISPOSITION

110. For the reasons given above, I therefore strike out and dismiss the Freeport Action, and grant the relief sought by the Plaintiffs in the Nassau Action as indicated above. I also grant costs to the Plaintiffs in the Nassau Action and the Defendants in the Freeport Action, to be taxed if not agreed.

111. I invite the parties to draft the Order to give effect to the judgment of the Court, which Order is to include any incidental directions as may be necessary to give effect to the reliefs granted.

Klein J.,

11 April 2025