

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

Claim No. COM/COM/00032 of 2024

IN THE MATTER of an application by HARBOUR ISLAND VILLAS CONDOMINIUM ASSOCIATION PHASE I AND PHASE II MANAGEMENT COMPANY for leave to institute proceedings against the Defendants pursuant to section 278 (c) of the Companies Act 1992.

AND IN THE MATTER of the Companies Act 1992 (*the Act*).

AND IN THE MATTER of VALENTINE'S RESORT & MARINA LTD., VALENTINE'S ISLAND DEVELOPMENT LIMITED, HARBOUR ISLAND VILLAS LIMITED, AND POTCAKE PROS LIMITED (*the Company*).

BETWEEN

HARBOUR ISLAND VILLAS CONDOMINIUM ASSOCIATION PHASE I AND PHASE II MANAGEMENT COMPANY

***(The Body Corporate formed by the merger of Harbour Island Villas Condominium Association Phase I and Harbour Island Villas Condominium Association Phase II)
(Complainant pursuant to Section 280 of the Act)***

Intended Claimant

AND

**LEE PROSENJAK
STEPHANIE PROSENJAK
THOMAS P. MURPHY JR.
JOHN R. NICHOLS**

(Sued in their capacity as Officers & Directors of the Company)

Intended Defendants

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Kahlil Parker, KC with Roberta Quant for the Claimant
Damian Gomez KC with Kenyatta Gibson for the First Defendant
Chizelle Cargill for the Second Defendant
Tara Archer-Glasgow with Trevor Lighthoune for the Third and Fourth Defendants

Hearing date(s): 6 February, 2026

JUDGMENT

WINDER, CJ

This is my brief decision on the proper application of Rule 30.5 of the Supreme Court (Civil Procedure) Rules 2022 (the CPR).

[1.] The Claimant (Harbour) is the body corporate operating and managing the Harbour Island Villas Condominium Phase I and Harbour Island Villas Condominium Phase II (*the Condominiums*). The Condominiums consists of a combined 41 units within a resort property known as 'Valentine Resort & Marina which is alleged by the Claimant to be owned and operated by a corporate group consisting of affiliate companies -Valentine's Resort & Marina Ltd., Valentine's Island Development Limited, Harbour Island Villas Limited, and Potcake Pros Limited (collectively referred to as "the Company").

[2.] Harbour has brought this action claiming oppression and unfair prejudice pursuant to section 280 of the Companies Act. Harbour sues the defendants in their capacity as the directors of the Company.

[3.] In the course of the proceedings Harbour has applied, by Notice of Application for interim relief as follows:

1. The Claimant makes application for Orders and Declarations, pursuant to and in accordance with Rule 17.1 (1)(a)(b)(d) and (3) of the CPR, section 280(3)(b)(e) and (i) of the Companies Act, and under the inherent jurisdiction of the Court, that:
 - a) A receiver or receiver manager be appointed for the Company pending further or final order herein.
 - b) An independent non-executive director be appointed for the Company in addition to the directors currently in place until further or final order herein.
 - c) The 1st and 3rd Defendants, within twenty-eight (28) days, produce to the Court and the Claimant with respect to the 3rd Defendants', and their affiliates', financial statements and an accounting, verified by affidavit, of the funds, receipts, fees, charges, levies, and revenue generated and received by the 3rd Defendants and their affiliates with respect to their renting out of the units owned by the Unit Owners in the Condominium and the funds collected and received by the 3rd Defendants and their affiliates payable to the Claimant and Unit Owners from January A.D. 2024 to the date thereof.
 - d) The Unit Owners in the Condominiums, pursuant to and in accordance with the Phase I and Phase II Declarations, set out at Clause 15 the said Declarations, as defined in the Amended Statement of Claim filed herein, and their respective Leases of Easements, have a right to the "use of the amenity areas and access to and from the Property and the Units..." The amenity areas shall consist (without

limiting the generality thereof) of a swimming pool, common garden areas, pathway, walkway and golf cart parking areas” (emphasis ours), without unlawful interference and/or disturbance of their quiet enjoyment thereof by the 1st and/or 3rd Defendants.

- e) The 1st Defendant be restrained from withholding accounting and other information from the Claimant with respect to the Company’s handling of funds and matters concerning and impacting the operation and management of, and Unit Owners in, the Condominiums.

[4.] Harbour’s application was supported by the Affidavit of John Nichols of Coral Gables, Florida, USA on 26 January 2026. The Nichols Affidavit, according to the document, was purportedly sworn in San Diego, California before Notary Public Dawn Lawson.

[5.] The Nichols Affidavit was filed in the action and did not contain an apostille or other certification authenticating Dawn Lawson as being duly licensed by the United States of America and authorized to take the oath of John Nichols.

[6.] The issue which has arisen is whether the Nichols Affidavit can be received into evidence in the absence of an apostille. Mr Parker KC, for Harbour, argues that the ambit of the rule is sufficiently wide to encompass the propriety or lawfulness of the oath taking.

[7.] I agree.

[8.] Rule 30.5 of the CPR provides as follows:

BAH CPR 30.5

30.5 Making of affidavits.

(1) An affidavit must —

- (a) be signed by all deponents;
- (b) be sworn or affirmed by each deponent;
- (c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and
- (d) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.

(2) The statement authenticating the affidavit (“the jurat”) must follow immediately from the text and not be on a separate page.

(3) An affidavit may not be admitted into evidence if sworn or affirmed before the attorney of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such attorney.

(4) If it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that the —

- (a) affidavit was read to the deponent by him;
- (b) deponent appeared to understand it; and
- (c) deponent signed or made his mark in his presence.

(5) A person may make an affidavit outside the jurisdiction in accordance with —

- (a) the law of the place where he makes the affidavit; or
- (b) this part.

(6) Any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

[9.] Rule 30.5 permits an affidavit to be made outside the jurisdiction in accordance with —

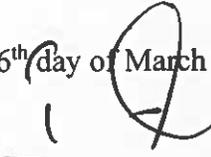
- (a) the law of the place where he makes the affidavit; or
- (b) [Part 30].

Rule 30.6 creates a presumption that where an affidavit, such as the Nichols Affidavit, which purports to have been sworn in accordance with the laws and procedure of the State of California, USA, is presumed to have been so sworn.

[10.] In my view, where proceedings are governed by the CPR, the need for authentication proving the authority or lawfulness of a person who took an oath or affirmation outside the jurisdiction, with respect to an affidavit is no longer necessary. The affidavit purporting to have been sworn or affirmed outside the jurisdiction is presumed for all purposes to have been sworn in accordance with the law and procedure of any place outside the jurisdiction.

[11.] In the circumstances, for the purposes of the CPR, there is no need for the Nicols affidavit, or any other affidavit similarly sworn, to contain an apostille or certification. It is presumed to be duly and properly sworn. Of course, like with every presumption, it is open to be rebutted where it can be shown otherwise.

Dated this 26th day of March 2026


Sir Ian R. Winder
Chief Justice