

**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 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)***

*Claimant*

**AND**

**LEE PROSENJAK**

*1<sup>st</sup> Defendant*

**AND**

**STEPHANIE PROSENJAK**

*2<sup>nd</sup> Defendant*

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

**AND**

**VALENTINE'S RESORT & MARINA LTD.  
VALENTINE'S ISLAND DEVELOPMENT LIMITED  
HARBOUR ISLAND VILLAS LIMITED  
POTCAKE PROS LIMITED**

*3<sup>rd</sup> Defendants*

**AND**

**RBC ROYAL BANK (BAHAMAS) LIMITED**

*4<sup>th</sup> Defendant*

**Before:** The Honourable Chief Justice Sir Ian R. Winder

**Appearances:** Kahlil Parker, KC with Roberta Quant for the Claimant  
Kenyatta Gibson with Damien Gomez KC for the First Defendant  
Chizelle Cargill for the Second Defendant  
Tara Archer Glasgow with Trevor Lightbourne for the Fourth Defendant

**Hearing date(s):** 29 April 2026

**JUDGMENT**

## **WINDER, CJ**

This is an application by the Claimant (Harbour) seeking injunctive relief and for the appointment of a Receiver.

### **Background**

[1.] 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 Harbour 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 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. The Amended Standard Claim Form is settled in part as follows:

11. The Company's unreasonable, unfair, and oppressive behaviour in disregard of the Claimant's interests as a creditor and stakeholder complained of herein was discovered in or about August A.D. 2023. The Company began to fail to account to the Claimant in accordance with its obligations and failed to meet other obligations to the Condominium's insurance company, Bahamas Power and Light, and the Unit Owners. While the Company has serviced some of its said debts, it has failed and refused to pay the sums demanded by the Claimant to the date hereof.

12. The Claimant has made repeated demands of the Company for payment of the sums due to the Claimant with respect to its share of the revenue generated by the Company's rental of the Units in the Condominiums. Despite the Company having promised payment of the Claimant's share of the July A.D. 2024 revenue, in the amount of \$150,000.00, by the 25th day of August A.D. 2024, the Company has yet to make the said payment or provide any reasonable or lawful excuse for its refusal to make the said payment. The Company's failure to release the said funds due and payable to the Claimant has resulted in the Claimant having to delay necessary and planned upgrades to the roofs of the Condominiums and other maintenance projects.

13. The Defendants have failed and/or refused to account to the Claimant for the revenue generated by the Units in the Condominiums or for the amounts due from the Company to the Claimant with respect to the operation and management of the Condominiums. The Defendants have likewise purported to unreasonably and unlawfully charge the Claimant and Unit Owners with respect to items that were not approved in the Claimant's budget.

14. The Defendants were also derelict in their duties as directors and demonstrated a callous disregard for the affairs of the Company and the ultimate fate of the Company itself. By failing to account to the Claimant with respect to the funds received by the Company and held in trust for the Claimant and to ensure that the Company's just debts are paid, the Defendants have unfairly, oppressively, and unlawfully deprived the Claimant, who has a legitimate interest in, and claim against, the Company, of the efficacy of its rights remedies against the Company.

15. The above stated events complained of herein represent how the Claimant discovered the Defendants' failure to discharge, or have regard for, their duty of care owed to the Company to:

- a) act honestly and in good faith with a view to the best interests of the Company; and
- b) exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.

16. The Defendants by their acts and/or omissions complained of herein have exercised their powers as Officers and Directors of the Company in a manner which was oppressive or unfairly oppressive to, and/or that unfairly disregarded the Claimant's interests as a creditor and stakeholder of the Company and have thereby caused the Claimant harm.

#### PARTICULARS OF THE DEFENDANTS' BREACH OF THEIR DUTY OF CARE & FIDUCIARY DUTY

The Defendants breached their duty of care and fiduciary duties owed to the Company in the following ways *inter alia*:

- a) The Defendants failed to ensure that the Company accounted to, and paid, the Claimant and the Unit Owners in accordance with its contractual obligations.
- b) The Defendants failed to ensure that the just and lawful debts of the Company were satisfied despite having the means and opportunity to do so.
- c) The Defendants failed to properly devote themselves to the success of the Company and its business interests.
- d) The Defendants were not, and have not been, operating or representing the Company in good faith or with the expectation of meeting its obligations to its creditors and/or other stakeholders.

17. The Defendants, as Officers and Directors of the Company, have by their acts and/or omissions complained of herein exercised their powers and conducted their affairs in a manner which was oppressive or unfairly oppressive to, and/or that unfairly disregarded the Claimant's interests as a creditor of the Company and have thereby caused the Claimant grave commercial harm.

#### PARTICULARS OF THE CLAIMANT'S REASONABLE EXPECTATIONS

The Claimant reasonably expected the Defendants as Officers and Directors of the Company *inter alia*:

- a) To act in accordance with their fiduciary duties and in the best interests of the Company, viewed as a good corporate citizen;
- b) To treat individual stakeholders affected by corporate actions and executive decisions equitably and fairly in accordance with the Company's duties as a responsible corporate citizen;
- c) To ensure that the Company's debt to the Claimant was honoured and satisfied to the best of the Company's ability;
- d) To exercise good business judgment in a responsible way;
- e) To make business decisions in good faith and in accordance with the due performance of their functions;
- f) To refrain from acting to the detriment of the Company;
- g) To consider the interests of the Claimant in making their decisions;
- h) To act in the best interests of the Company and its stakeholders; and
- i) To act in accordance with their statutory duties under the Act, to:
  - i. act honestly and in good faith with a view to the best interests of the Company; and
  - ii. exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.

### **The Application**

[3.] Harbour has applied, by Notice of Application, for interim relief. The Notice of Application is settled in the following terms:

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.] The grounds outlined in Harbour’s application are listed as the following:

- (1) The Claimant fears that absent independent oversight the 1st Defendant will persist in his unlawful, oppressive, and unfair disregard of, and conduct toward, the Claimant and Unit Owners in the exercise of his powers as a Director and Officer of the Company and in the conduct of the Company’s affairs. The Claimant’s Board has without success sought substantive and meaningful engagement with the 1st Defendant, the provision of critical financial information, and the disbursement of necessary funds for the operation, management, and maintenance of the Condominiums without success.
- (2) The Condominiums cannot be properly operated without the affairs of the Company being conducted and carried on in a proper, efficient, and business-like manner, by directors cognizant of and compliant with their statutory and common law fiduciary duties owed to the Company.
- (3) The appointment of an independent non-executive director and/or a receiver or receiver manager pending further or final order herein will ensure that the Court can properly assess and ensure that the powers and duties of the Company’s Board are being exercised and discharged in accordance with their fiduciary duties, as well as securing an independent account of the operation and management of the Company pending a final determination.
- (4) The Claimant is uniquely vulnerable to abuse by the 1st Defendant of his duties owed to the Company. The Claimant is not seeking to undermine the operation and management of the Company, only to ensure that it is being operated and managed lawfully and in its own best interest, which, the Claimant maintains, would be in its own best interests as a significant stakeholder and creditor. The Claimant has a vested and demonstrable interest in the success and lawful operation of the Company and understands that any director or receiver appointed will owe their duties to the Company exclusively as well as the Court.

- (5) The 1st and 3rd Defendants have failed and refused to account to the Claimant for funds received and retained by the Company with respect to the common expenses and the budget of the Condominiums pursuant to and in accordance with the agreement between the parties. The 1st and 3rd Defendants have failed and refused, without reasonable or any lawful explanation, to release funds deducted from Unit Owners' rental revenue, and requested by the Claimant, to discharge the Claimant's duties with respect to the maintenance and improvement of the Condominium buildings despite repeated demands. The current situation is untenable as these funds, intended to address the common expenses and operational needs of the Condominiums, have been deducted but unlawfully retained by the Company from monies due to the Claimant and Unit Owners.
- (6) The 1st and 3rd Defendants have failed and refused to respond to requests for information from the Claimant's auditors thereby impeding the Claimant's ability to discharge its own accounting obligations.
- (7) The 1st and 3rd Defendants have continued to unduly and prejudicially delay, and failed to make payment to utility and insurance providers of the Condominiums, which has resulted in a recent threatened lapse of the Condominiums' insurance policy and the temporary disconnection of electricity to the Condominiums. This is highly disturbing because funds to address these expenses have been received and retained by the Company from monies due to the Claimant and Unit Owners, but which funds are being inexplicably withheld, diverted, or otherwise misapplied, again, without reasonable account or lawful explanation.
- (8) By Clause 13.1 of the Debenture, as defined in the Amended Statement of Claim, the 4th Defendant reserved the right: "*At any time after the Bank's demand for payment of any money or the discharge of any obligation or liability secured by this Debenture, the Bank may, in writing under the hand of any Manager or Assistant Manager of the Bank, appoint any person or persons ('the Receiver') to be an administrative receiver or manager and receiver or manager, or any combination of those things, of all or any part of the Charged Assets. The Bank may authorise any joint receiver or manager to exercise any power independently of any other joint receiver or manager, may from time to time fix the remuneration of the Receiver, and may remove the Receiver and appoint another in his place.*" The Claimant acknowledges the 4th Defendant's priority as a secured creditor as well as its reserved powers of intervention and does not oppose the exercise of those powers in priority to its application herein to have an independent non-executive director, receiver, or manager and receiver, or any combination thereof in the circumstances.
- (9) By the Rental Management Agreements between the Company and Unit Owners, the Company agreed *inter alia* to forward a detailed monthly statement with net rental income, if applicable, identifying the nights any unit was occupied, whether

it was occupied by a tenant or the owner, the rate charged for the said rental, and whether any additional charges or credits were included. The 1st and 3rd Defendants have failed and refused, despite repeated demands, to fully and properly account to Unit Owners with respect to the rental of their units and the proceeds thereof. They have also arbitrarily and oppressively excluded Unit Owners from participation in the rental pool.

- (10) At Clause 1 (5) of the Leases of Easements the Company agreed: "*As soon as reasonably practicable after the end of each year of the said term the Lessor shall send to the Lessee a copy of the audited accounts of the Lessor in respect of the total Service Charge for that year.*" The Company has failed to account to the Claimant and Unit Owners for its receipts or to provide audited, or any, accounts despite repeated requests. At Clause (D) of the Leases of Easements the Company affirms that: "*In accordance with the provisions of Clause 15 of the Declaration the Lessor has agreed to grant the Lessee such rights over the Amenity Areas and to provide such services as are hereinafter mentioned on such terms and subject to such conditions as hereinafter appear.*" At Clause 1 of the Leases of Easements the Company agrees that "*in pursuance of the said agreement and in consideration of the rent or Service Charge hereinafter reserved and the covenants and stipulations hereinafter contained the Lessor hereby demises under the Lessee*" *inter alia* full right and liberty for the Lessee, their successors, servants, visitors, and licensees for all purposes of domestic use and convenience incidental to the occupation of the Unit to use and enjoy the amenity areas and to pass an repass over the walkways, paths, etc.
- (11) At Clause 5 of the Lease of Easements the Company covenanted and agreed with the Unit Owners that: "*the Lessee paying the said rents or Service Charge hereby reserved and performing and observing the covenants and agreements on the part of the Lessee to be observed and performed hereinbefore contained shall during the said term peaceably and quietly hold and enjoy the rights granted by this lease without any lawful interruption or disturbance by the Lessor or any person or persons claiming through or under or in trust for the Lessor*".
- (12) In breach of the Declarations and the Leases of Easements the 1st and 3rd Defendants have purported to arbitrarily exclude Unit Owners from the use and enjoyment of the amenity areas including the swimming pool, gym, beach chairs, and other amenities incidental to the use, enjoyment, and occupation of the Units.
- (13) The relief sought by the Claimant is reasonable and necessary in order to preserve the interests of the Claimant and the Unit Owners pending a final determination in this matter.
- (14) The balance of convenience lies with the Claimant, who was at all material times and remains a significant creditor and stakeholder of the Company, and who will be unreasonably exposed to great prejudice and commercial harm if the 1st and 3rd

Defendants are permitted to continue their unfair disregard and oppressive conduct unabated.

[5.] Harbour's application was supported by evidence which included the affidavits of Rushea N. Stuart, Mary Barroll, John Nichols, Michael Strange, Eric Weinstein, Sloan Lehman and Mac McNeil.

[6.] Mary Barroll gave affidavit evidence that:

(a) Since acquiring into Valentines, Lee has altered the business operations in a manner that is oppressive, unfair, and prejudicial to Unit Owners. Despite ongoing proceedings, these practices have continued unabated.

(b) Lee has failed to pay creditors, resulting in threats to insurance coverage and temporary loss of electricity and water supply to the Condominiums. Such failures have undermined the stability and security of the property.

(c) Unit Owners, including her (Barroll's) family, have been arbitrarily excluded (or threatened of exclusion) from the rental pool, cutting off revenue and exposing them to property tax liability. They have also been denied (or threatened of denial of) access to amenity areas, depriving them of substantial value and enjoyment of their property.

(d) Funds deducted from Unit Owners for utilities and insurance have not been properly applied. Premiums went unpaid for months, risking cancellation of insurance, and payments to vendors remain outstanding. The Defendants have refused to provide proper accounting despite statutory obligations.

(e) Valentines has obstructed auditors, preventing compliance with section 17 of the Condominium Act, which requires accurate records and annual audited accounts. As managers, the Defendants are bound to ensure these records are produced.

(f) Unit Owners have not received rental revenues since July 2025, despite repeated demands. Complaints continue, and she fears irreparable harm to Valentines' financial viability due to mismanagement, dishonesty, and unlawful conduct.

[7.] Mary Barroll gave a second affidavit in support of Harbour's case. Her evidence was that:

(a) Lee and the Company have a primary duty to reconcile finances and properly manage the books, since they hold all records and control all funds. This responsibility is critical and time-sensitive, as they provide services to Harbour and Unit Owners and are compensated through rental agreements with 50% of rental revenues.

(b) She emphasized that, contrary to Lee's assertions, neither she nor her husband ever sought to acquire the resort. In her view, since Lee's acquisition, the resort has been neglected both in appearance and substance.

(c) She denied that the power outage was due to load shedding, asserting instead that it was caused by failure to pay the Bahamas Power and Light bill. She noted that \$150,000 deducted was only paid after the commencement of the action.

(d) Finally, she rejected what she described as the offensive allegations made against her and her husband by Lee in his affidavit evidence.

[8.] Michael Strange gave evidence in support of Harbour's case. His evidence was that:

(a) He has been the Treasurer of Harbour since 2012 and a homeowner since 2007.

(b) In June 2024 Harbour approved a \$150,000 assessment to be deposited into the contingency fund controlled by Lee and the Defendants. Although the sum was deducted from Unit Owners' rental earnings in June 2024, it was not remitted until January 2025 despite repeated demands.

(c) He noted that in the past such assessments were remitted promptly. Similarly, in May 2025 an assessment of \$30,000 was made but had not been remitted as of 2 January 2026.

(d) Finally, he denied Lee's assertion that contractual property management fees had been voluntarily waived.

[9.] Michael Strange filed a second affidavit refuting Lee's allegations and highlighting what he perceived as bullying tactics and failure to respond to questions from Harbour's Board, buyers, and realtors. He disputed Lee's claim that the insurance was in good standing, referencing emails from agent Stuart Tavares. His evidence portrays systemic mismanagement, intimidation, and financial irregularities under Lee's control, undermining both Harbour's governance and the Resort's viability.

[10.] Strange identified several red flags in Valentines' operations: (a) Supplier payments extended beyond 30, 60, and even 90 days. (b) Missed payments to Harbour's insurance company on three occasions. (c) Critical suppliers cutting service, including BPL disconnecting power. (d) Booking.com suspending service in November 2025 due to late payment. (e) Failure to pay Unit Owners their earnings or respond to enquiries. (f) Refusal to provide BPL invoices showing delinquent balances. (g) Failure to complete promised marina dock repairs despite claiming a \$1,000,000 loan approval. (h) Resort receiving large advance deposits yet appearing short of cash during peak season. (i) Refusal to provide monthly financial information to Harbour's Board.

[11.] John Nichols gave evidence in support of Harbours case. He stated that:

(a) Lee and the Company failed to pay him his share of rental revenue despite repeated emails sent in October, November, and December 2025. Payment was only received after the December hearing, with no explanation for the delay.

(b) He was advised that twelve other Unit Owners also experienced non-payment of rental revenues during 2025, showing a broader pattern of withholding funds.

(c) The Defendants continue to fail to meet obligations to vendors and utilities, even though funds have been deducted from monies due to Harbour and Unit Owners.

(d) He was informed that Valentines' failure to pay power bills led to a temporary electricity cut by Bahamas Power and Light, which also disabled the reverse osmosis system supplying fresh water. The generator was in disrepair and unable to minimize the disruption.

(e) He shares Harbour's concerns about the Defendants' oppressive conduct and disregard for accountability, noting that proper management of the Condominiums requires transparency and timely payment.

(f) He refuted Lee's suggestion that Mary Barroll and her husband Wayne Albo made an unsuccessful bid to purchase Valentines, clarifying that only preliminary conversations occurred and no offer was made.

(g) Finally, he expressed concern that Lee's difficulty in providing financial information and making payments indicates that the Company are not being operated in a proper or lawful manner.

[12.] Eric Weinstein provided an affidavit in support of Harbour's case. His evidence was that he is a board member of Harbour. He gave evidence as to the difficulty in securing the necessary financial information from Lee to do the work of Harbour. He expresses his disappointment at the degree to which the property has deteriorated.

[13.] Sloan Lehman gave evidence in support of Harbour's case. His evidence was as to Lee's efforts to discourage his purchase of a unit in the resort and attempts to levy an unauthorized fee of \$70,000.

[14.] Lee and the Company (collectively "the Defendants") relied on affidavit evidence, including the affidavits of Lee, Matthew Ianniello and Patricia MacMillan.

[15.] Lee provided several affidavits in which:

(a) Lee explained that he became a Director of the Company in April 2023 upon acquiring the resort. He emphasized that he voluntarily waived over \$180,000 in contractual property management fees and dedicated hundreds of hours to financial reconciliation and audit support, work that would ordinarily command professional fees exceeding \$30,000. He argued that these actions are inconsistent with Harbour's characterization of his conduct as oppressive or prejudicial.

(b) Lee stated that, aside from a single email in January 2026, neither he nor the Company received properly authorized requests for accounting information. He maintained that most requested information has always been available to Unit Owners and Harbour via an online portal, which Harbour has refused to use. Through this portal, owners can view rental sums, revenue shares, and expenses.

(c) Lee alleged that Mary Barroll harbors personal animus against him because his offer to acquire the resort was accepted over hers. He claimed that Barroll and her allies

are using their control of Harbour's Board to orchestrate a takeover of the Company and to fuel litigation not supported by the majority of members. He accused the Board of suppressing extraordinary and annual meetings to avoid elections and prevent members from directing the Board to cease litigation.

(d) On financial matters, Lee denied mismanagement. He asserted that insurance premiums are paid in installments, consistent with historical practice, and coverage has always remained in good standing. He exhibited the Insurance Agent's statement to confirm this. He attributed power outages to BPL load shedding and maintenance issues, noting that Harbour itself removed budget allocations for backup generation. He insisted that complaints about maintenance were manufactured.

(e) Lee confirmed that the \$150,000 contingency assessment was paid in full over a year ago, with the resort advancing funds despite some Unit Owners failing to remit their shares. He also exhibited proof of payment of the \$30,000 contingency assessment. He noted that his attorney advised Harbour's attorney that requested information would be provided, save for the full General Ledger, and that materials would be handed over within a reasonable time upon receipt of a lawful request.

(f) Regarding the rental pool and amenity access, Lee explained that only Unit Owners in arrears were excluded or threatened with exclusion. He alleged that Barroll owed \$40,000 in unpaid fees and Strange owed \$20,000. Nevertheless, all Unit Owners have continued to enjoy amenity access despite breaches and non-payment. He argued that his conduct is neither extortionate nor capricious, stressing that collapse of the resort would harm his own investment.

(g) Lee maintained that monthly statements have been continuously provided to Unit Owners via email. He denied withholding or misapplying funds, insisting that Harbour is manufacturing an accounting crisis. He reiterated that he and the Company have not acted oppressively, unfairly, or unlawfully, and that their actions have been consistent with good faith and contractual obligations.

[16.] Matthew Ianniello, a Unit Owner, gave affidavit evidence that under prior leadership before Lee assumed control, the value of his unit declined to less than half of its original purchase price. He attributed this decline not only to market conditions but also to neglect, lack of vision, and failure to protect owners' interests by previous management. He stated that when Lee took leadership, he observed a meaningful shift in approach, with greater engagement, clearer communication, and genuine efforts to stabilize and improve the property while increasing revenue. He acknowledged that Lee inherited substantial challenges but believed Lee acted sincerely and in good faith to reverse prior damage and set a more positive course. Ianniello further noted that, despite improvements at the Resort level, the current Homeowners Association Board has adopted an increasingly negative and adversarial stance, focusing on confrontation rather than collaboration or problem-solving.

[17.] Patricia MacMillan, a Unit Owner, gave affidavit evidence similar to that of Matthew Ianniello. She stated that under Lee's management she has experienced improved communication, stronger rental performance, increased property value, and a more professionally managed resort. She emphasized that she does not support Harbour's Board, and her perspective as a Homeowner is that Lee's leadership has brought positive changes compared to prior management.

### **Discussion**

[18.] Harbour says that the Court has broad remedial powers to intervene and regulate a company's affairs so as to abate any oppressive or unfairly oppressive conduct or unfair disregard of the interests of any creditor *inter alia* of the company. It is submitted that both the pleadings and the evidence adduced by Harbour before the Court demonstrate that there is a reasonable and lawful basis for the intervention of the Court, so as to prevent the continued oppression and unfair disregard of its interests by Lee in his conduct of the affairs of the Company, and to preserve them as a going concern pending further order.

[19.] Harbour accepts that the appointment of a receiver is a discretionary and equitable remedy, and Harbour acknowledges that while the Court's discretion is wide it must be exercised judicially. It is submitted that Harbour's demonstrated and substantive concerns about Lee's mismanagement of the Company, which, if left unrestrained, would have a devastatingly adverse impact on its interests as a creditor and stakeholder warrant urgent intervention so as to preserve the Company in order that any relief granted by the Court would not be rendered nugatory.

[20.] Harbour also says that the Defendants have failed to substantively engage with these proceedings and have pleaded bare denials and have made demonstrably false assertions by way of their defence. The Court has been provided with clear and undisputable evidence that the Defendants have continued the unfair, oppressive, and unlawful conduct as complained of by Harbour.

[21.] Harbour says that, in breach of section 280(2)(a)(b) and (c) of the **Companies Act**, the Companies, by their failure and refusal to respond to the reasonable and lawful requests for information, an accounting, and payment by Harbour, its auditors, and unit owners, the business or affairs of the Company and its affiliates are and have been carried on or conducted in a manner that is oppressive, unfairly oppressive to, and that unfairly disregards the interests of Harbour in its capacity as a creditor and stakeholder of the Company. It is submitted, therefore, that the Court ought to grant the interim relief sought to prevent the continuation of the said oppressive, unfair, and unlawful conduct on the part of the Defendants.

[22.] Harbour says that appointment of a receiver over Valentines will enable and ensure its preservation pending further or final order of the Court. Harbour reasonably apprehends that Lee's unlawful conduct complained of herein in disregard of Harbour's interests as a creditor also reflects

and demonstrates a flagrant and detrimental disregard of his fiduciary duties owed to the Company, which is likely to result, and is resulting, in the decline and failure of the Company to Harbour's prejudice. Should the Company be allowed to fail because of the oppressive conduct complained of, any judgment secured by Harbour would be rendered hollow and meaningless.

[23.] The fact that the Condominiums are located within Valentines and that the failure of Valentines would also do irreparable harm to Harbour and its unit owners whose property and investments are inextricably linked to the operation of Valentines reflects the '*difficulty*' or '*special circumstances*' necessary to warrant the Court's intervention by way of the appointment of a receiver. The parties do not have a traditional debtor creditor.

[24.] The Defendants' case is that Harbour is not a creditor of the Company and as such not entitled to seek an Order pursuant to Section 280 of the **Companies Act** and or under the inherent jurisdiction of the Court. They dispute each and every allegation of Harbour that they are in default of any obligation to Harbour and assert that their allegations must be determined and adjudicated at trial. There is no proven or established debt in this matter and as such the appointment of a Receiver at this stage would be premature.

[25.] The Defendants deny that they have failed and refused to respond to the reasonable and lawful requests for information, and accounting and payments by Harbours, its auditors and unit owners.

[26.] The Defendants argue that Harbour has not proven any egregious act which amounts to oppression and or any oppression whatsoever sufficient to warrant the appointment of a Receiver in the circumstances.

[27.] Finally, the Defendants say that two of the companies listed as part of the Company, namely Valentines Island Development Limited and Potcake Pros Limited, do not have any contractual connection to Harbour and are unrelated to Harbour's Claim. The appointment of a receiver over these companies would in and of itself be oppressive, disproportionate and inequitable.

[28.] Section 21(1) of the **Supreme Court Act** provides that the Court may, by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.

[29.] Section 280 of the **Companies Act** provides:

280.(1) A complainant may apply to the court for any order against a company or a director or officer of that company to restrain oppressive action.

(2) If upon an application under subsection (1), the court is satisfied that in respect of a company or any of its affiliates —

- (a) any act or omission of the company or any of its affiliates effects a result;
- (b) the business or affairs of the company or any of its affiliates are or have been carried on or conducted in a manner; or
- (c) the powers of the directors of the company or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly oppressive to, or that unfairly disregards the interest of any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matter complained of.

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit, including —

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or a receiver manager;
- (c) an order to regulate a company's affairs amending its articles or creating or amending a unanimous shareholder agreement;
- (d) an order directing an issue or exchange of shares or debentures;
- (e) an order appointing directors in place of, or in addition to, all or any of the directors then in office;

[Emphasis added]

[30.] The applicable test for the appointment of a receiver is set out in section 21(1) of **the Supreme Court Act**, which requires the Court to be satisfied that the circumstances render such an appointment just and convenient. Section 280(3)(a) of **the Companies Act** further empowers the Court to appoint a receiver in oppression proceedings, including on an interim basis, where the Court considers it fit to do so.

[31.] Both parties have advanced competing accounts of the state of the resort under Lee's management. While I note that the evidence remains untested by cross-examination, I am satisfied that there is sufficient material to demonstrate that delayed payments to Harbour, utility companies, insurers and unit owners, under Lee's management, have placed Unit Owners' investments at risk. The extent of that risk is unclear, as Lee has not been forthcoming with information. I am not satisfied that Lee has made out his claim, that the requested information was available to Harbour and unit owners who have refused to access it, or that no proper request for the information has been made. If what is alleged by Harbour is proven, it would amount to oppressive conduct which unfairly disregards the interests of Harbour and the unit owners.

[32.] According to the learned authors of **Kerr & Hunter on Receivers and Administrators** 19<sup>th</sup> Edition at paragraph 1-2 and 1-6 the authors set out the following correct statement of principle in relation to the appointment of a receiver:

1-2 Nature of the office. A receiver in a claim or other proceeding is an impartial person, appointed by the court to collect, protect and receive, pending the proceedings, the rents,

issues and profits of land, personal estate or any other kind of asset, which it does not seem reasonable to the court that either party should collect or receive, or for enabling the same to be distributed among the persons entitled.

1-6 Object of appointment. A receiver can only properly be appointed in a claim for the purpose of getting in and holding or securing funds or other property, which the court at the trial, or in the course of the claim, will have the power, and the means to distribute amongst, or making over to, the persons or person entitled thereto the property in dispute. The object sought by such an appointment is therefore the safeguarding of property for the benefit of those entitled to it.

[33.] At this preliminary stage, I find that the red flags identified by Michael Strange appear, prima face, to have merit, and warrant the appointment of a receiver on an interim basis. These red flags, albeit subject in some cases to dispute, include: (a) Supplier payments extended beyond 30, 60, and even 90 days; (b) Missed payments to Harbour's insurance company on three occasions; (c) Critical suppliers cutting service, including BPL disconnecting power; (d) Booking.com suspending service in November 2025 due to late payment; (e) Failure to pay Unit Owners their earnings or respond to enquiries; (f) Refusal to provide BPL invoices showing delinquent balances; (g) Failure to complete promised marina dock repairs despite claiming a \$1,000,000 loan approval; (h) Resort receiving large advance deposits yet appearing short of cash during peak season; and (i) Refusal to provide monthly financial information to Harbour's Board.

[34.] I find that it is just and convenient to make the appointment, having nonetheless reminded myself that these allegations are untested.

[35.] I readily recognize the implications of appointing a receiver, particularly as it relates to costs. However, I am satisfied that these can be mitigated by limiting the terms of the appointment and regular reporting conditions. The Court will revisit the terms of the engagement upon receipt of the receiver's reports. To minimize disruption, I propose to set this matter down for trial on an expedited basis, with affidavits standing as examination-in-chief.

[36.] Subject to submissions to the contrary, I do not propose empowering the receiver over all assets of the four companies identified in the group. The appointment will be confined to the corporate entities in contractual relationship with Harbour and which receives or distribute the income from the rentals. The receiver's powers will therefore be limited to power over the assets associated only with the rental pool income. Such power and duty, to include the assessing of the status and history of these account(s) and settling necessary expenses, taxes, utilities and ordinary debts incurred in the course of normal business. Such power also includes the timely remission of revenues to Unit Owners. For the avoidance of doubt the Receiver will not have the power to carry on the trade or business of any of the Company.

[37.] The Court will determine the length of the receivership once the receiver's findings are reported. For clarity, the appointment of a receiver will not displace the directorship of any of the companies in the group, nor will it result in the appointment of new directors to their Boards.

[38.] I am satisfied that Raymond Winder is a fit a proper person for the appointment, as Receiver, and therefore make the appointment, as prayed for at paragraph 1(a) of the Notice of Application. I will also grant the relief sought at paragraph 1(c) of the Notice of Application for the provision of information, but I refuse the other reliefs claimed therein.

[39.] The parties are directed to agree the formal terms of the receivership order in accordance with the directions set out above.

[40.] Harbour shall have its costs of the application to be assessed if not agreed.

[41.] The matter is adjourned to 7 July 2026 at 11:00am for case management and to settle the appointment order in the event the parties are unable to do so.

Dated this 2<sup>nd</sup> day July 2026

A handwritten signature in black ink, appearing to be 'I. Winder', written over a faint rectangular stamp.

Sir Ian. Winder  
Chief Justice