

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity**

2021/CLE/gen/FP/00122

B E T W E E N

SHERREXCIA A. ROLLE

Claimant

AND

SUFFOLK COURT CONDOMINIUM – PHASE 1 ASSOCIATION

First Defendant

HARCOURT DEVELOPMENT (BAHAMAS) LIMITED

Second Defendant

Before: The Honourable Justice Mrs. Constance Delancy

Appearances: Mr. Dawson Malone with Mr. Ian Cargill Jr., appearing for the Claimant
Mr. Kirk Antoni, appearing for the Defendant

Hearing Date(s): 10 April, 2025

JUDGEMENT

DELANCY J,

Background

[1.] The Claimant filed an Originating Summons on 3 September, 2021 pursuant to section 27 of the Law of Property and Conveyancing (Condominium) Act, Ch. 139 (“the Act”) seeking a declaration that Suffolk Court Condominium Phase -1 Association is in contravention of section 14 and 17 of the Act and the appointment of an Administrator for the operation of Suffolk Court.

[2.] The relevant filings are listed below:

- i. The first Affidavit of the Claimant was filed on the 1 October, 2021;
- ii. The Defendant filed its Memorandum of Appearance on the 18 October, 2021;
- iii. A "Notice of Appointment" was filed on 19 January, 2022
- iv. The Defendant's filed an Affidavit in Reply, made by Donald M. Archer, on the 8 November, 2021;
- v. A Notice of Trial was filed on 2 December, 2022;
- vi. The Claimants filed a further Affidavit on the 27 June, 2023;

- vii. The Second Affidavit of the Claimant was filed on the 27 June, 2023;
- viii. The Claimant filed its Case Management Questionnaire on the 30 June, 2023;
- ix. An Affidavit of Service was filed by the Claimant on the 4 July, 2023;
- x. A Case Management Order was filed on the 19 September, 2023;
- xi. An Affidavit of Service with relation to the Case Management order was filed on the 21 September, 2023;
- xii. The Claimant filed its opening submissions on the 24 November, 2023;
- xiii. An Affidavit of service of those Opening submissions was filed on the 12 December, 2023;
- xiv. The Affidavit of Fitness of Philip C. Galanis was filed on the 21 December, 2023;
- xv. Affidavit of service of the same was filed on 4 January, 2024;
- xvi. An order concerning Pre-Trial Review, Trial and a view of the
- xvii. Locus in Quo was filed on the 29 April, 2024;
- xviii. The Claimants filed its Pre-Trial Memorandum on the 10 May, 2024;
- xix. An Affidavit of Service of the same was filed on the 1B May 2024;
- xx. The Third Affidavit of the Claimant was filed on the 7 April, 202
- xxi. The Affidavit of Fitness of John S. Bain was filed on the 10 April, 2025.

Evidence of the Claimant

[3.] The Claimant filed three Affidavits dated 1 October, 2021; 27 June 2023 and 7 April, 2025, respectively. The evidence, in part, is as follows:

- i. That by virtue of two conveyances dated 28 January, 2020 between Harcourt Developers (Bahamas) Limited and the Claimant recorded in the Registry of Records in Volume 1348/ at pages 630 to 637 and 654 to 661 respectively, she became the owner of 501 Bimini and 502 Abaco ("the Units") in Suffolk Court Condominium - Phase 1 ("the Condominium ");
- ii. The Condominium was created by a Declaration made the 20 February, 2009 pursuant to the Act and recorded in the Registry of Records in Volume 011048 at pages 278 to 356;
- iii. Pursuant to the Act and the Declaration, the body corporate is styled as "Suffolk Court Condominium - Phase I Association" and the Second Defendant reserved the right to fully constitute the Board of the Condominium until the sale of the last unit in the Condominium.
- iv. Paragraph 2(4) of the Declaration made reference to the Second Defendant Appointing Suffolk Court Company Limited as the manager of the Property and her attorneys made a search for the company but found no evidence of it being incorporated.
- v. She has expressed concern with the state of the complex to the Defendants through its servants or agents, namely:
 - a) Disrepair of elevators;
 - b) Disrepair of Generator for common areas;
 - c) Lack of operable stairwell lighting which posed a hazard;
 - d) Birds living in the roof and visible nests;
 - e) Water leaks in unit 501 that persisted for over 9 months and caused damage to the hallway leading to the guestrooms, the

- guest rooms and the laundry rooms. The leaks caused staining on the crown moulding and ceiling;
- f) Further, there is need for mold inspection;
 - g) A number of windows need to be resealed;
 - h) Poor venting of the units below Unit 502 results in the aroma being dispersed into Unit 502 each time their exhaust fan is used;
 - i) The Exterior of the Condominiums have not been repaired Since Dorian;
 - j) The paint on the exterior has water bubbles and pockets also it is peeling;
 - k) Decorative objects also need to be repaired;
 - l) There is no water tank/storage and when there is no power coupled with the generator being inoperable there is no water to the Units;
 - m) The dock slip is inoperable;
 - n) The maintenance of the complex is subpar. The complex remains unclean.
- vi. She has made requests to the second Defendant, through its personnel in Grand Bahama, for the First Defendant pursuant to section 14, specifically 14(1) b and 14(1)c, and section 17 of the Act.
- vii. She was advised by the Second Defendant that it was conducting repairs.
- viii. That her then Counsel wrote the Defendants' counsel concerning the alleged breach of the Agreement for Sale, purchase and the Act. The application is made pursuant to section 27 of the Act.
- ix. Prior to purchasing the Units, she rented the Units and knows not all of the damage is a result of hurricane Dorian.

Evidence of the Defendant

[4.] The Defendants sought to rely on the Witness statement of Donald M. Archer. However, the Court notes that the witness was not made available for trial. Therefore, little weight is attached to their evidence.

Locus

[5.] The Court visited the locus en quo on the day of trial. The Court's record of the visit to the *locus in quo* is summarized below.

All complaints of damage are pre Hurricane Dorian. Inoperable elevators, lack of maintenance to the exterior- paint chipping, shutters missing/falling off, missing façade;

No dock repairs, roof itself is compromised, No exterior lights. Cracked tile on along balcony areas;

SR noted the substantial crack in the side wall of Abaco building. GM noted that it was durock but taken down to concrete and re-plastered;

Gazebo by dock requires repair;

The elevator was down in the Abaco building for 2 weeks and intermittently;

There was cracked tile in elevator;

Issues to the ceiling Claimant's in unit;
There were birds' fecal matter, water and uneven steps in stairway;
Bubbling paint due to water damage both in her unit and outside;
Flaking paint to the exterior of the building;
The Common areas are very small but unmaintained;
The pool had chipped/missing tile as well as several loose bricks;
Court asked whether there were known issues of mold? Mr. Lee the property manager stated no. However, the Court notes that there was mildew on building exterior, and in the Claimant's condo unit, with obvious signs of water intrusion;
That there was water damage at base of the doors. Property manager states that it is deterioration; and
That there were no gutters for the rain run-off.

Issues

- [6.] The issues to be determined by the Court are:
- i) whether the Claimant, as a person having interest, has shown cause for the appointment of an Administrator; and
 - ii) if the Claimant has shown cause, for what period (indefinite or fixed) should the Administrator be appointed for.

Law & Discussion

- [7.] The action was brought pursuant to section 27 of the Act which states:
27. (1) **The body corporate or any judgment creditor of the body corporate or any person having an interest in any unit may apply to the Supreme Court for the appointment of an administrator or administrators for the operation of the property.**
- (2) **The court may in its discretion on cause shown, appoint an administrator or administrators for an indefinite or a fixed period on such terms and conditions as to remuneration or otherwise as the court thinks fit.** The remuneration and expenses of any such administrator shall form part of the common expenses within the meaning of this Act.
- (3) The administrator or administrators shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the court shall order and the administrator or administrators may delegate any of the powers so vested in him or them as the case may be.
- (4) The court may in its discretion on the application of an administrator or any person referred to in subsection (1) of this section, remove or replace an administrator.
- (5) On any application made under this section the court may make such order for the payment of costs as it thinks fit. [Emphasis added]

- [8.] Both Counsel laid over submissions to the Court that pertained to an issue of interpretation of Sections 20, 21, 22, 23, and 24 of the Act. However, at trial, the interpretation of these Sections were agreed.

[9.] Counsel for the Claimant submits that there was no dispute as to facts, nor as to what law applies. Rather the issue before the Court is how to apply the Act.

[10.] Counsel further submits that the evidence of Mr. Archer, though present, should not be given much weight as he is not prepared to give evidence nor be cross examined before the Court the cannot make adverse finding of fact in the absence of cross-examination (see **Hepburn v AG** 1991 BHS J. No. 765 and **TUI UK Limited v Griffiths** 2023 UKSC 4).

[11.] That the Claimant has locus standi to bring the action, as she is a “*person having any interest in any unit.*” (see **Marcopulos v Silver Sands Sea Lodge Condominium Management Co.** (2004] BHS J. No. 317).

[12.] That Sections 14 and 17 of the Act are mandatory. Specifically, to hold insurance (see **Meachem v Lucayan Towers South Condominium Assn. Ltd.** [1993] BHS J. No.75); to keep the property in a “*state of good and serviceable repair*” (see **Owners Corporation Strata Plan 61288 and another v Brookfield Multiplex Ltd** 156 Con WR 64 (2014) HCA 36.); and to provide “*duly audited*” accounts, at minimum, annually.

[13.] Counsel for the Claimant, relying on a case from Antigua and Barbuda, submits that the considerations for the Court to exercise its discretion to appoint an Administrator are as follows.

- a) Whether there has been established a demonstrated ability to manage the strata corporation;
- b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation;
- c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation;
- d) where there is struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation s and
- e) where only the appointment of administrator has any reasonable prospect of bringing to order the affairs of the strata corporation ...(see **Unit 301 South Point Ltd. v The Proprietors, Condominium Plan C20080028 Rols Ltd.** CSC 24 April 2014; **Lum v Strata Plan VR 5192001**] BCA No.641.)

[14.] Finally, that the Defendants inability to comply with the Act was demonstrated over a number of years; Substantial misconduct and mismanagement with relation to the Condominium was established.

[15.] Counsel for the Defendants made opening and closing submissions that did not assist the Court in making its decision.

[16.] The Court having regard to the Act, the evidence of the Claimant and all the circumstances find that the Defendants are the de facto Boards responsible for the overall statutory duties as prescribed by the Act and the Defendants are in breach of their statutory duties as defined in section 14 (b), 14(c) and 17 of the Act.

[17.] Their failure to adequately keep the Condominium in good repair, keep the property insured and provide audited accounts has not been remedied at any point from the filing of the action to the date of trial, some 4 years' difference.

Disposition

[18.] The Court hereby declares that the Defendants are in breach of Sections 14 and 17 of the Act and appoints Mr. John S. Bain as Administrator of Suffolk Court for the period of 24 months from the date of this judgement such period may be extended with leave of the Court. The Administrator shall prepare and file bi-annual reports which are to be made available to the Unit Owners.

[19.] Remuneration and expenses of the Administrator shall form part of the common expenses of the First Defendant.

[20.] I hereby order that the legal costs of Callendars & Co. associated with this action to be paid by the Defendants, the Claimant to be excluded from contributing towards the same, to assessed if not agreed (see **Section 27(5)** of the Act).

Dated: 7 August, 2025

[Original Signed and Sealed]

Constance Delancy
Justice