

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

ANGUILLA

Claim Number: **AXAHCV2013/0012**

Between

(1) **PARAGON HOLDINGS LIMITED**
(2) **JOHN ERATO**

Claimants

And

(1) **TURTLE'S NEST (CONDOMINIUM) CO. LTD**
(2) **BRAD HUFFMAN**
(3) **WESLEY FUHRMAN**

Defendants

Appearances:

Ms. Tara Carter for the Claimants

Mr. Thomas Astaphan QC, with him Ms. Paulette Harrigan for the Defendants

2018: February 22nd

ORDER

[1] This matter was referred to a Referee in accordance with Part 40 of the CPR 2000; the Court having considered that the matter herein required a prolonged examination of documents generated from the several but related issues for which relief is being sought. By consent, both parties agreed to the appointment of Mr. Michael Fay QC, as a suitable Referee in this matter. His remit was to deal with issues between the parties herein arising out of the Anguilla Condominium Act (the Act), the Condominium Declaration and By-Laws, the Rental Pool and Maintenance Agreements.

- [2] Mr. Fay QC produced a report on 18th July 2017 subsequent to a seven day hearing facilitating the hearing of at least 14 witnesses after which he considered extensive written submissions. The report was supplied to each party and it is now set down for consideration pursuant to Part 40.6. The Court notes that there was some delay in the consideration of the report, this was occasioned mostly by the repercussions of Hurricane Irma in September 2017, immediately after the Court's long vacation. The matter has however been replaced on track and the parties were given 14 days notice of the Court's intention to consider the said report. Mr. Fay QC's report was very thorough and unravelled the course of events and the difficulties and irregularities in the application of the law that led the parties to this voluminous litigation.
- [3] On 24th September 2004 Paragon Holdings Limited ("Paragon"), of which Mr Erato was the majority shareholder and director, lodged with the Registrar of Lands a declaration submitting parcel 59 pursuant to the Condominium Act 2000. As such, Turtle's Nest (Condominium) Co Ltd, ("Strata Corp") came into existence after registration of the Declaration by the Registrar in September 2004. The Strata Corp was to derive its duties and powers from sections 15 and 16 of the Act. As the Referee lamented, the failure by Parties to understand how the Strata Corp should have operated the property is at the root of the disagreement and litigation herein.
- [4] The Referee made several findings, the following of which the Court proposes to adopt;
- Prior to 2011 the Strata Corp only had two directors, Mr. Erato and Mr. Soons. The Strata Corp held no meetings prior to 2nd May 2011 and prepared no budgets.
 - That the responsibility for management of Turtle's Nest Beach Resort is vested in the directors of the Strata Lot Corporation namely Turtle's Nest (Condominium) Co Ltd (hereafter "Strata Corp"). The current directors of the Strata Corp are the second and third defendants, Mr. Huffman and Mr. Fuhrman. It follows that absent any agreement or permission from the Strata Corp, Paragon does not have any right or obligation to maintain or occupy the common property for the purpose of maintenance or operation of a rental pool. It does so presently because of the status quo injunction issued by this Court.
 - There is no evidence of any agreement or permission between the Strata Corp and Paragon permitting, requiring or authorizing Paragon to maintain the common property or to occupy any part

of the common property for the purpose of such maintenance or for the purpose of operating the rental pool.

- There were oral agreements between Paragon and the unit owners for maintenance in accordance with Part D of the SPA and for the operation of the rental pool.
- Strata Corp has hitherto acquiesced in Paragon maintaining the common property and occupying parts of the common property
- The containers from which Paragon operates the rental pool and a car rental are classified as buildings attached to the land and form part of the common property. The Strata Corp has acquiesced to Paragon's occupation of the containers. Absent any agreement or permission from Strata Corp, Paragon has no right to occupy any part of the common property. Paragon also has no right to operate a car rental from the common property.
- Paragon has managed Turtle's Nest Beach Resort since 2004 notwithstanding no agreement with the Strata Corp to do so. Paragon maintained Turtle's Nest by charging a monthly fee to unit holders other than itself. Paragon's employees and contractor performed these services and were paid by Paragon. Paragon has no obligation to account to unit holders or Strata Corp for its use of sums paid to it pursuant to oral maintenance agreements.
- The salaries of staff working in Paragon's office are not payable from the rental pool (75%) as opposed to the Management pool (25%) and Paragon is liable to account to the unit holders for sums representing salaries of staff working in the office deducted from this pool. This is not however, a claim for the present Defendants.
- The Resolutions made on the 23rd February 2013 were done at a validly called meeting by the Directors and the Resolutions, save and accept Parts ii of the first and second Resolutions, are valid and effective decisions of the Strata Corp.

- The unit owners are competent to determine who manages any rental pool of the units but they are not competent on behalf of Strata Corp to authorize Paragon to maintain common property or to authorize Paragon to occupy any part of the common property.
- The Government of Anguilla would need to be a party to any legal proceedings to amend the terms of the Aliens Land Holding Licences issued to the Unit Owners and this is not a matter for this Court.
- The Strata Corp has not fixed any budgets and has not rendered statements to unit owners although the unit owners were directed to pay monies previously paid to Paragon to the Strata Corp.

[5] I note and wish to echo the concluding comments of the Referee. In my view it identifies the root of the problems between the parties and recommends a way forward with a view to putting an end to this lengthy and costly litigation. It is the failure of parties to effectively manage Turtle's Nest in accordance with the Act and the Declaration which is the cause. The comments are worth repeating;

"It is extraordinary that the Strata Corp has not adopted a budget between 2004 and 2017. It seems to me to be imperative that the Strata Corp should now urgently assume control of the property, adopt a budget, and appoint a managing agent pursuant to section 5.14 of the Bylaws (whether that be Paragon or another entity) to provide daily management and maintenance... There is no doubt that the Strata Corp needs expert advice on what its rights and duties are, how it should assume control and what agreement needs to be put into place. Ideally the Strata Corp ought to find somebody with experience of setting up strata corporations in Anguilla or in jurisdictions with a condominium law similar to the Act. Undoubtedly this will require the Strata Corp to raise funds from the unit owners in excess of the usual annual fees, but hopefully the unit owners will see it as an investment in the future. Unless and until the Strata Corp takes control of the property, there is every risk that there will be more expensive litigation like this matter."

[6] Having given careful consideration to the recommendations of the Report herein the Court adopts the same in whole. With reference to the relief sought in the Claim and Counterclaim herein and in keeping with the numbers in the relevant prayers, the Court hereby orders as follows:

Order

- (a) The injunctions sought by the Claimants at paragraph 1 are hereby refused.
- (b) The claim for damages for breach of Contract by the Claimants in paragraph 2 is dismissed.
- (c) The declarations sought by the Claimants at paragraphs 3 to 9 are hereby refused.
- (d) The declarations sought by the Defendants/Counterclaimants in paragraphs 1 to 4 are refused.
- (e) The orders sought in paragraphs 5 to 12 are refused.
- (f) The claim for damages at paragraph 13 is dismissed.
- (g) No party having been substantially successful in the Claim and Counterclaim herein, each party is to bear their own costs.
- (h) The injunction dated the 25th October 2013 is hereby discharged.

Cheryl Mathurin

High Court Judge

By the Court

Registrar