

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2016/CLE/gen/00406

BETWEEN

HAMPTON RIDGE CONDOMINIUM ASSOCIATION LIMITED

Plaintiff

AND

(1)TEROU BANNISTER

(2)NADIA BANNISTER

Defendants

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mrs. Nadia Wright and Mrs. Eugeina Butler of Providence Law for the Plaintiff
Mr. Carlton Martin of Martin & Martin for the Defendants

Hearing Date: 7th day of June 2017

Civil law – Restrictive covenant in Declaration of Condominium - Not to rent unit for less than 3 months – Whether Defendants bound by byelaws - Whether Clause 3 of byelaws breached - General Principles of Statutory Interpretation – Injunction – Whether Defendants flagrantly breached injunction – Perpetual Injunction – Contempt of Defendants

The Plaintiff is a company established to operate and manage the development of condominiums known as “Hampton Ridge” in the Western District of New Providence. All condominium units are governed by the Law of Property and Conveyancing (Condominium) Act, Chapter 139 and the Declaration of Condominium (“the Declaration”) The Defendants owned a condominium unit in Hampton Ridge. Clause 3 of the byelaws of the Declaration provides that rental/leases of units for periods of less than three months are not permitted.

The Plaintiff alleged that the Defendants were renting their Unit under the name “Tranquility Haven @ Hampton Ridge” for continual periods of less than three (3) months, in contravention of Clause 3. The Defendants flatly denied that they have been renting or have rented the Unit as

alleged by the Plaintiff. They further allege (i) that they have a right to enjoy and use the Unit consistent with section 6(3) and the other relevant provisions of the Act and the bye-laws of the Declaration; (ii) the Plaintiff has no *locus standi* to bring this action and (iii) they are not limited to renting their Unit for the minimum period or term as stipulated in Clause 3 of the byelaws of the Declaration.

HELD: finding that the Defendants have breached the restrictive covenant by renting their condominium for periods of less than three months,

1. On a balance of probabilities, the Plaintiff's evidence is preferred to that of the Defendants. This Court finds that the witnesses for the Plaintiff were candid and honest. On the other hand, in spite of overwhelming documentary evidence, the Defendants still insisted that they do not rent/lease their Unit on short-term tenancy but that they live in it. The Court finds them to be strangers to the truth.
2. The Defendants are bound by the byelaws of the Declaration and are in breach of Clause 3.
3. The general principle of statutory interpretation is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would lead to some absurdity, repugnancy or injustice: **Abel v Lee** (1871) L.R.6 C.P. 365 at 367, per Willes J. applied.
4. Words in a statute or in a document are to be given their natural meanings and if they are plain and clear, there is no need for other aids of interpretation. The meaning of words is a question of fact; the effect of words is a question of law: **Chatenay v Brazilian Submarine Telegraph Co.** (1891) QB 79 at 85, per Lindley L.J.
5. The Defendants have flagrantly breached an Injunction granted by the Court and continues to do so as at the date of the filing of the Plaintiff's witness statements. The Defendants will have to appear before this Court to show cause why they should not be sentenced for the deliberate, contumelious and contumacious disregard of an Order of the Court.
6. The power of the civil court to punish for contempt is nothing new: **See Order 52 Rule 1 of the RSC, Ch. 53.**
7. The Plaintiff is a proper party and has standing to bring this action.

JUDGMENT

Charles J:

Introduction

- [1] Hampton Ridge Condominium Association Ltd (“the Plaintiff”) is a company established to operate and manage a set of condominiums known as “Hampton Ridge” located in the Western District of New Providence. All condominium units are governed by the provisions of the Law of Property and Conveyancing (Condominium) Act, Chapter 139 (“the Act”) and the Declaration of Condominium dated 28 April 2008 and recorded in Volume 10305 at pages 124 to 185 in the Registry of Records (“the Declaration”).
- [2] Terou Bannister and Nadia Bannister (collectively “the Defendants”) are owners of Condominium Unit 105 (“the Unit”) within Hampton Ridge.
- [3] The Plaintiff instituted this action against the Defendants alleging that they have breached a restrictive covenant contained in Clause 3 of the Second Schedule (“the byelaws”) of the Declaration which provides in part that “....*Rental/leases for less than three (3) months are not permitted.*”
- [4] The Plaintiff alleged that, in 2014, it became aware that the Defendants were renting the Unit under the name “Tranquility Haven @ Hampton Ridge” for continual periods of less than three (3) months, and they were doing so through international websites such as flipkey.com and vrbo.com.
- [5] The Plaintiff seeks, among other things, a declaration to enforce against the Defendants the restrictive covenant contained in Clause 3 of the byelaws and a perpetual injunction to prevent future breach of that clause.
- [6] In their Re- Amended Defence filed on 29 May 2017, the Defendants admitted paragraphs 1 to 3 of the Amended Statement of Claim with the qualification that the Plaintiff’s control and operation is also subject to the rights of the Defendants

under the Act. The Defendants did not deny paragraphs 4, 5, 6, 7 and 8 of the Amended Statement of Claim. However, at paragraph 9, the Defendants categorically denied that they have been renting or have rented the Unit as alleged by the Plaintiff. They further allege (i) that they have a right to enjoy and use the Unit consistent with section 6(3) and the other relevant provisions of the Act and the byelaws; (ii) the Plaintiff has no *locus standi* to bring this action and (iii) they are not limited to renting their Unit for the minimum period or term as stipulated in the byelaws of the Declaration.

[7] For reasons which will become evident later on in this judgment, I find in favour of the Plaintiff with costs. I also grant a perpetual injunction restraining the Defendants whether acting by themselves, their servants or agents or howsoever otherwise from carrying on or authorizing or permitting the rental or leasing of the Unit 105 for any period of less than three (3) months.

Background

[8] In or about October 2007, the Defendants entered into an agreement (“the Agreement”) with United Bahamas Development Limited (“United Bahamas”) for the purchase of the Unit within the Hampton Ridge Estates Condominium.

[9] On 28 April 2008, the Declaration was executed between United Bahamas as mortgagor and owner of the equity of redemption of the first part and First Caribbean International Bank (Bahamas) Limited (“the Bank”) as mortgagee of the second part AND the parties listed in the First Schedule (which include the Defendants) (“the purchasers”) of the third part. As already mentioned, the Declaration was recorded in Volume 10305 at pages 124 to 185 in the Registry of Records.

[10] On 4 July 2008, the Defendants executed an Indenture of Conveyance (“the Conveyance”) between United Bahamas of the one part and them [the Defendants] which was duly recorded in Volume 10537 at pages 431 to 440 in the Registry of Records. By virtue of the Conveyance, the Defendants became

the owners of the Unit. The Conveyance specifies at Recital (C) that the Defendants are subject to the *“certain conditions and restrictions (hereinafter referred to as “the said Unit restrictions”)* as set forth in the Declaration and to all other provisions of *The Law of Property and Conveyancing (Condominium) Act, 1965 and all amendments thereto (together hereinafter referred to as “the Act”)*.

[11] On or about 11 November 2014, the Plaintiff wrote to the Defendants complaining that their Unit was being advertised for short term rentals for periods of less than three (3) months. On 5 May 2015, the Plaintiff wrote again to the Defendants regarding the breach of Clause 3 of the byelaws.

[12] On 23 March 2016, the Plaintiff commenced these proceedings by a Specially Endorsed Writ of Summons which was subsequently amended by an Order of the Court on 16 February 2017. The Plaintiff seeks the following relief:

- 1) A declaration that it is entitled to enforce against the Defendants the restrictive covenant contained in the byelaws of the Declaration dated 28 April 2008 and made between the Plaintiff of the one part and the Defendants of the other part;
- 2) A declaration that the rental or leasing of Unit 105 by the Defendants for a period of less than three (3) months is in breach of the restrictive covenants as set out in Clause 3 of the byelaws of the Declaration;
- 3) An injunction restraining the Defendants whether acting by themselves or their servants or agents or otherwise howsoever from carrying on or authorizing or permitting the rental or leasing of their Unit for a period of less than three (3) months; and
- 4) Further or in the alternative, damages for breach of covenants; interest and costs.

[13] In the intervening period, on 8 November 2016, the Plaintiff applied for and obtained an injunction to restrain the Defendants from continuing their breach. A Penal Notice was attached to the Injunctive Order which was filed on 22 November 2016.

[14] Between November 2016 and March 2017, the parties filed a sundry of other applications. On 16 March 2017, the Court gave directions for a speedy hearing of this matter to commence on 7 June 2017.

[15] On 10 May 2017, at a Pre-Trial Review hearing, the Court ordered that the Counterclaim which was annexed to the Amended Summons filed by the Defendants on 21 April 2017 be withdrawn and dismissed.

The issues

[16] The parties have submitted their respective statement of facts and issues. In my opinion, the following issues arise for determination namely:

- 1) Did the Defendants leased or rented out their Unit for periods of less than three months?
- 2) Whether the Defendants are bound by the byelaws of the Declaration?
- 3) What is the true meaning of Clause 3 of the byelaws and whether the Defendants breached it?
- 4) Whether the Defendants have acted contumely by continuing to breach Clause 3 of the byelaws despite the Injunctive Order granted on 8 November 2016 and endorsed with a Penal Notice on 22 November 2016;
- 5) Does the Plaintiff have standing to bring this action?

The evidence

[17] The Plaintiff called its President, Derek Rolle and its Secretary, Lillian Russell to give evidence on its behalf. Both Defendants testified.

- [18] Mr. Rolle testified that, besides being the President of the Plaintiff, he is also an owner and occupier of Unit 501 in Hampton Ridge. He had personally observed the movements of numerous persons who have stayed at the Unit for short periods of time. Mr. Rolle further testified that he had sent a number of emails to the Plaintiff with respect to the constant number of short term tenants who have occupied the Unit: see Agreed Bundle of Pleadings filed by the Plaintiff on 13 April 2017. He testified that, at the filing date of his witness statement on 28 April 2017, the Defendants are still advertising short term rentals of the Unit on various websites: see D.R. 1.
- [19] Under cross-examination, Mr. Rolle maintained that he saw and communicated with persons who were renting the Unit on a short-term basis.
- [20] The next witness for the Plaintiff was its Secretary, Lillian Russell. She is also a Trust Manager at CIBC. She resides at Unit 106 which is directly adjacent to the Unit that is owned by the Defendants. She testified that the Plaintiff is responsible for enforcing the byelaws contained in the Declaration and that the Defendants are prohibited from renting or leasing their Unit for a period of less than three months as contained in the Declaration which they signed.
- [21] Ms. Russell testified that, in the year 2014, it was drawn to the Plaintiff's attention that the Defendants were renting their Unit for short term rentals for periods of less than three months. It was also discovered that the Defendants had posted their Unit on websites to advertise its availability for a minimum of three nights. Ms. Russell attached website postings and guests' reviews to her witness statement: Exhibit L.R. 1 consisting of 8 pages.
- [22] Ms. Russell stated that, as a result of this, by letter dated 11 November 2016, the Plaintiff wrote to the Defendants requesting that they immediately desist from rental of the Unit on short term intervals of less than three months. However, the Plaintiff's letter was ignored and the breach continued unabated.

- [23] Ms. Russell testified that the Plaintiff then resorted to their lawyer who issued a letter dated 5 May 2015 admonishing the Defendants to discontinue their actions. However, says Ms. Russell, the Defendants disregarded the legal demand and continued to rent the Unit for periods of less than three months.
- [24] Ms. Russell next testified that she has personally observed the comings and goings of numerous persons who have stayed at the Unit for short periods of time. She stated that, on Friday, 15 April 2016, she personally confronted two of the tenants of the Unit due to the amount of noise they were making and the strong smell of marijuana emanating from the Unit. She sent an email to the Plaintiff outlining her observations and concerns with regard to the constant number of persons who have occupied the Unit for short periods of time.
- [25] In early November 2016, Ms. Russell deposed that she observed the occupancy of the Unit and so, once again, she complained to the Plaintiff.
- [26] Shortly thereafter, the Plaintiff approached the Court and obtained an injunction to restrain the Defendants from continuing to breach Clause 3 of the byelaws of the Declaration. Ms. Russell stated that despite the injunction which was granted on 8 November 2016 and endorsed with a Penal Notice on 22 November 2016, the Defendants continue to rent their Unit for periods of less than three months.
- [27] Ms. Russell testified that, on the morning of Monday 14 November 2016, she witnessed a group of tenants move out of the Unit and a new group arrived that same afternoon in a rented vehicle. The tenants occupied the Unit for 3 days because she saw when they left on 17 November 2016.
- [28] Ms. Russell also testified that she witnessed another group of tenants move into the Unit on 18 November 2016 and left on 21 November 2016.
- [29] At paragraphs 16 to 20 of her witness statement dated 28 April 2017, Ms. Russell recited the many more occasions when tenants moved in the Unit for periods of less than three months. She stated that on the date of the filing of her witness

statement, the Defendants continue to rent the Unit despite an injunction and in breach of the byelaws of the Declaration.

[30] Under cross-examination, Ms. Russell stated that everything in her witness statement is true and correct. She stated that she personally witnessed the continual breach of Clause 3 of the byelaws. She said that she saw for herself the constant movements of tenants for periods of less than three months as she lives in the adjacent unit. She maintained, under cross-examination, that she had spoken to persons who stayed in the Unit. She testified that the Plaintiff wrote and spoke with the Defendants about the incessant breach.

[31] The Defendants opened their case by calling Terou Bannister as their first witness. Mr. Bannister testified that, in or about October 2007, he and his wife entered into an agreement with United Bahamas to purchase the Unit and, on 4 July 2008, they became the owners of the Unit.

[32] Mr. Bannister stated that, on 28 April 2008, the Declaration of Condominium was executed between United Bahamas and the Bank. The Declaration purports to have been executed by himself and his wife, Nadia Bannister but in fact, they never executed it or authorized anyone to execute it on their behalf or at all. At page 29 of the Declaration, he said that United Bahamas states that it executed the Declaration on behalf of the Defendants by virtue of a Power of Attorney given on 9 October 2007 and about to be recorded in the Registry of Records in the City of Nassau. He said that he and his wife had a search conducted at the Registry of Records and no such Power of Attorney has been recorded or lodged with the Registry of the Supreme Court.

[33] Mr. Bannister stated that the Defendants received a letter from the Plaintiff on 11 November 2014 stating that the Unit is being rented for less than three months in breach of Clause 3 of the byelaws. Subsequently, they received a letter dated 5 May 2015 from Nathaniel Dean & Co. advising them of the breach and its continuance. He stated that the letter threatened legal action if the breach is not

halted. He said that, as a result, they sought legal advice and their attorneys told them that they have not violated Clause 3 or any other Clause or Condition relative to the Unit.

[34] Mr. Bannister said that, on 22 March 2016, the Plaintiff commenced this action. At paragraph 8 of his witness statement, he states:

“We have not leased, rented, let or in any manner parted with the Unit from the time of our purchase of it to the present time. Nor have we breached any condition or restriction in respect of the Unit from the time of our purchase of it to the present. Further, Nadia and I have been advised by our attorneys, and we verily believe, that we have a right to use the Unit for residential purposes subject to the conditions and restrictions to which such use is subject, but the said Clause 3 is not one of the conditions and or restrictions and such Clause has no bearing whatsoever on or in respect of our residential use or dealings with the Unit.” [Emphasis added]

[35] At paragraph 9, Mr. Bannister continues:

“Nadia and I have also been advised that the Unit is not subject to the provisions of the Law of Property and Conveyancing (Condominium) Act, 1965....We have also been advised by our attorneys, and we verily believe, that if in fact the Act applies to the Unit or to Nadia and me as owner of the Unit, we further say that the Plaintiff has no right, now (sic) ever had any right, to write to Nadia and me in the manner in which it has; nor did the Plaintiff have, and does not now have, a right to bring action against Nadia and me as it did or at all. The conduct of the Plaintiff in respect of these matters and the Unit has caused us not to enjoy the Unit in a quiet and peaceful manner.” [Emphasis added]

[36] Mr. Bannister averred that the Plaintiff has no right or standing to bring this action. He also stated that *“the constant and obvious watching and spying by the Plaintiff and its agents ... created and continues to create a discomfort for us and a reduction of our enjoyment of the Unit.”* He was cross-examined. He said that since their purchase of the Unit, they have only done one long term rental of two years. He is familiar with the two online sites but they have not advertised or rented the Unit on any short term basis or at all.

[37] He was questioned on the reviews from guests at page 88 of the Agreed Bundle of Pleadings. On that, he maintained that he never rented the Unit.

[38] On re-examination, he stated that it is not his website. He said that he received a letter from the Plaintiff but he never responded because they accused him of renting the Unit on short term which he never did.

[39] The next witness to take the stand was Nadia Bannister. Her witness statement is very concise. She stated at paragraph 3 that “*she adopts the statement of Terou and repeats the same herein verbatim*”. She further stated that she has not violated any of the restrictions and conditions or rules in relation to the Unit or its use. Like her husband, she flatly denied using the Unit for anything other than their place of residence. Like her husband, she also does not appreciate the constant watching and spying carried out by the Plaintiff and its servants or agents. She yearns for peaceful enjoyment of her residence.

Issue 1 - Did the Defendants rent/lease their Unit for less than three months or at all?

[40] The first issue is whether the Defendants live in the Unit as they allege or lease/rent it to tenants for periods of less than three months, as the Plaintiff asserts.

[41] This is a question of fact. Having had the opportunity of seeing, hearing and observing the demeanour of the witnesses for the Plaintiff as well as the Defendants, on a balance of probabilities, I prefer the evidence of the Plaintiff to that of the Defendants. Both Mr. Rolle and Ms. Russell struck me as truthful, candid and honest witnesses. In addition, their evidence was supported by materials obtained from two online websites: flipkey.com and vrbo.com: see Exhibit L.R. 2 at pages 82 to 89 of the Agreed Bundle of Pleadings. A scrutiny of the materials reflects the following (i) the property is described as Tranquility Haven @ Hampton Ridge (the Defendants did not say that that property is not the Unit); (ii) the review at page 87 states “*the pictures on this site do not do justice to Nadia and Terou’s place*” (the first names of each Defendant); (iii) the review at page 88 states: “*Terou did a wonderful welcome tour for us...*” (the first

name of Mr. Bannister) and (iv) another review at page 88 states “*Nadia picked us up from the airport...*” (the first name of Mrs. Bannister).

[42] It is indeed strange that, despite overwhelming documentary evidence supported by the very candid evidence of Mr. Rolle and Ms. Russell (both residents of Hampton Ridge), the Defendants flatly denied that they were/are renting/leasing the Unit. They insisted that they are living in it. This is nothing more than a fabrication. Ms. Russell, who lives next door, had seen numerous different persons frequenting the Unit. On occasions, as soon as one group of guests leaves in the morning, another group would arrive the same day. Mr. Rolle also testified to personally observing the movements of numerous persons who stayed in the Unit for short periods of time. He was not cross-examined as to the truthfulness or not of his testimony.

[43] That being said, the Defendants did not impress me at all. I found them both to be strangers to the truth and consequently, I rejected their evidence completely.

[44] I therefore find that the Defendants rented/leased and continue to rent/lease the Unit on short term basis for periods of less than three months. I also believed both Mr. Rolle and Ms. Russell that up to the time of the filing of their respective witness statement on 28 April 2017, the Defendants were still advertising short term rentals of the Unit on various online websites; a blatant disregard of the Court’s Order of 8 November 2016 and endorsed with a Penal Notice on 22 November 2016.

Issue 2: Are the Defendants bound by the byelaws of the Declaration?

[45] Learned Counsel for the Plaintiff, Mrs. Butler submitted that the Defendants are bound by the byelaws of the Declaration and more specifically, Clause 3 which provides as follows:

“No trade manufacture business or commercial undertaking (other than long and short term rentals of condominium units) shall be permitted in any condominium unit and no condominium unit shall be used for any

purpose other than residential purposes. Rental/leases for less than three (3) months are not permitted. [Emphasis added]

[46] She further submitted that the Defendants are also bound by statute law to adhere to the byelaws. Section 6(4) of the law provides as follows:

“When recorded, a Declaration shall be binding on all owners of units in the building to which the Declaration relates and shall constitute constructive notice to subsequent purchasers and all other persons.”

[47] Learned Counsel, Mr. Martin representing the Defendants, submitted that the Act does not apply to the Defendants. In this regard, he referred to section 2 of the Act which provides as follows:

“This Act shall apply only to property as hereinafter defined which is expressly made subject to the provisions of the Act by a Declaration in manner hereinafter provided.”

[48] In other words, says Mr. Martin, for the Act to apply to any property, the property must be expressly made subject to the Act by the Declaration itself.

[49] In their oral testimony, the Defendants alleged that they never executed or authorized anyone to execute the Declaration on their behalf or at all. They further alleged that although United Bahamas stated that it executed the Declaration on behalf of the Defendants (and other owners of units) by virtue of a Power of Attorney given on 9 October 2007 and about to be recorded in the Registry of Records, they have done a search and no such document has been recorded or lodged with the Registry of the Supreme Court.

[50] Learned Counsel Mr. Martin submitted that since the Defendants have not executed or authorized anyone to execute on their behalf the Declaration and they were not a party to it, the provisions of the Act do not apply to the Unit.

[51] In my considered opinion, there are four reasons for this Court to reject this submission. First, as earlier stated, I found as a fact that the Defendants cannot be believed in their testimony. Consequently, I do not believe them when they

said that they never executed or authorized anyone to execute the Declaration on their behalf or at all. If they had wished to persuade the Court as to their truthfulness, they could have furnished the Court with some documentary evidence to state that they conducted a search which revealed that no Power of Attorney has been recorded or lodged with the Registry of the Supreme Court.

[52] Secondly, section 6(4) of the law expressly states that **when the Declaration is recorded** (not signed by parties), **it shall be binding of all owners of units in the building** (which includes the Defendants) and shall constitute constructive notice to **subsequent purchasers and all other persons**. It is common ground that the Declaration dated 28 April 2008 was filed in the Registry of Records in Volume 10305 at pages 124 to 185. It is therefore binding on all owners of units in the building, subsequent purchasers and all other persons.

[53] Thirdly, by virtue of a Conveyance dated 4 July 2008 from United Bahamas and the Bank to the Defendants, they became the owners of the Unit. The Conveyance specifies at Recital (C) that the Defendants are subject to the *“certain conditions and restrictions (hereinafter referred to as “the said Unit restrictions”) as set forth in the Declaration and to all other provisions of The Law of Property and Conveyancing (Condominium) Act, 1965 and all amendments thereto (together hereinafter referred to as “the Act”).*

[54] Fourthly, in their Amended Defence as well as their Re-Amended Defence, the Defendants expressly admitted paragraphs 3, 4 and 7 of the Statement of Claim. Paragraph 3 states as follows:

“All condominium unit (owners) [sic] are governed by the provisions of the Act and by the Declaration of Condominium (“the said Declaration”) which was filed in the Registry of Records in Volume 10305 at pages 124 to 185 and dated the 28th April 2008.”

[55] Paragraph 4 of the Amended Statement of Claim states:

“That Section 6(4) of the Act states the following” *When recorded a Declaration shall be binding on all owners of units in the building to which*

the Declaration relates and shall constitute constructive notice to subsequent purchasers and all other persons.

[56] Then, at paragraph 7, the Defendants admitted that:

“By virtue of the said Declaration (specifically Clause 3 of the Second Schedule) which sets out the Conditions and Restrictions thereto as well as Section 6(4) of the Act, the Defendants are bound to abide by the regulations and restrictions which govern the Hampton Ridge Condominium Unit Owners.”

[57] So, for learned Counsel Mr. Martin to assert that the provisions of the Act and the Declaration do not apply to the Unit is disingenuous. The Defendants admitted that *“all condominium units (which must include the Unit) are governed by the provisions of the Act and by the Declaration.”* The Defendants also admitted that they are bound to abide by *“the regulations and restrictions which govern the Hampton Ridge Condominium Unite Owners.”*

[58] For all of these reasons, the Court holds that the Defendants are bound by Clause 3 of the byelaws of the Declaration.

Issue 3: What is the true meaning of Clause 3 of the byelaws and whether the Defendants breached it?

[59] Clause 3 of the byelaws states as follows:

“No trade manufacture business or commercial undertaking (other than long and short term rentals of condominium units) shall be permitted in any condominium unit and no condominium unit shall be used for any purpose other than residential purposes. Rental/leases for less than three (3) months are not permitted.” [Emphasis added]

[60] Learned Counsel Mr. Martin spent a considerable bit of time both in his oral and written submissions in his attempt to persuade the Court that there is no such three month limitation on the Unit: see paragraphs 24 to 41 of his written submissions.

[61] That being said, I agree with Counsel that words are to be given their natural meanings and, if they are plain and clear, there is no need for other aids of interpretation. The meaning of words is a question of fact; the effect of words is a question of law: **Chatenay v Brazilian Submarine Telegraph Co.** (1891) QB 79 at 85, per Lindley LJ.

[62] I also agree with learned Counsel Mr. Martin that statutes and documents have the same rules of construction. Both statutes and documents are to be read as a whole. The intention is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. In **Abel v Lee** (1871) L.R.6 C.P. 365 at 371, Willes J stated that:

“No doubt the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy, or injustice.... But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right or reasonable.”

[63] In my opinion, there is nothing clearer than Clause 3 of the byelaws. It means exactly what it says: Rental/leases for less than three (3) months are not permitted.”

[64] Having come to the finding that, on a balance of probabilities, I prefer the evidence of the witnesses for the Plaintiff to that of the Defendants, I further find that the Defendants have breached Clause 3 of the byelaws of the Declaration.

Issue 4: Whether the Defendants have acted contumely by continuing to breach Clause 3 of the byelaws despite Injunction?

[65] On 8 November 2016, at an *inter partes* hearing, this Court granted an interim injunction restraining the Defendants whether acting by themselves or by their servants or agents or otherwise howsoever from continuing in their breach of Clause 3 of the byelaws of the Declaration by subletting the Unit for a term of

less than three months. A Penal Notice was attached to the Injunctive Order on 22 November 2016.

[66] The injunction still remains in place.

[67] In her witness statement, Ms. Russell averred as follows:

“18. I witnessed another group of people move into the Unit on Tuesday 18 April 2017 and remained there up to Friday, the 21st day of April, A.D. 2017. I left the island and returned on Sunday, the 23rd day of April, A.D.2017. Upon my return on Sunday evening, the tenants were no longer there and the rental vehicle which they used was no longer parked in the allotted space for the unit.

20. That a man moved into the unit on 25th day of April 2017 and as at the filing date of this Witness Affidavit is still occupying the unit.”

[68] I accepted the evidence of the Plaintiff’s witnesses that up to the date of the filing of their respective witness statement on 28 April 2017, the Defendants were still advertising short term rentals of their Unit on various online websites. It is perhaps not surprising since, according to Mr. Bannister, they were advised by their attorneys that the Plaintiff *“has no right to write to us as it did or at all, and that we have not in the least violated the said Clause 3 or any other Clause of Condition relative to the Unit... Nadia and I have been advised that the Unit is not subject to the provisions of the Law of Property and Conveyancing (Condominium) Act.”* see paragraphs 7, 8 and 9 of the witness statement of Terou Bannister dated 5 May 2017 and filed on 9 May 2017.

[69] No doubt, given the advice of their attorneys, the Defendants continue to show utter disrespect and a blatant disregard of the Court’s Order. It is also very telling of the attorney who gave the advice.

[70] In the end, I find that the Defendants have contumaciously breached the Order of the Court. I agree with learned Counsel Mrs. Butler that such flagrant breach of an Order of the Court should not go unpunished. It is an affront to the Court. I also agree with learned Counsel Mrs. Butler that it seems obvious that the

Defendants, acting upon legal advice, will continue to breach the injunction unless this Court enforces the Penal Notice that is attached to it. I do so.

- [71] Learned Counsel Mrs. Butler cited the Court of Appeal judgment of **In the matter of The Contempt of Maurice Ginton Q.C., In the face of the Court on 28th September 2015 v In the Matter of The Contempt of Court of Maurice Ginton Q.C. on 9th October, 2015** [No. 1 and 2 of 2015] [unreported], urging the Court to follow suit and impose a penalty of at least \$5,000 as a result of the deliberate, contumelious and contumacious disregard of an order of this Court. I do not believe that I should make such an Order without giving the Defendants an opportunity to be heard in Open Court. On that note, my Order will be that the Defendants are to appear before the Court on Wednesday, 18 July 2018 at 10.00 a.m. to show cause why they should not be sentenced for Contempt of Court: see **Borrie & Lowe, The Law of Contempt, 3rd Edition 1996** where the learned authors opined that the rules of civil contempt are equally concerned to uphold the effective administration of justice and the Court can punish disobedience to its order by a committal just as in the case of a criminal contempt. See also **Louis M. Bacon v Sherman Brown** 2012/CLE/gen/0503 (unreported) –per Charles J.

Standing of the Plaintiff

- [72] The Defendants challenged the standing of the Plaintiff to bring this action. Learned Counsel Mr. Martin submitted that the Plaintiff is not a body corporate for the purposes of section 13 of the Act and therefore, it has no standing to bring these proceedings or any proceedings at all in respect of the Defendant's Unit and especially since the Act does not apply to the Unit.
- [73] Section 13(1) of the Act provides that "*the operation of the property shall be vested in the body corporate constituted in the manner provided by this section and such body corporate shall have the powers and duties prescribed by this Act and the relevant byelaws.*"

[74] Subsection 13(2) is relevant. It states:

“Where a company has been incorporated under the Companies Act to operate a property to which a Declaration relates and provision is made for every owner for the time being of a unit in such property to be ipso facto a member of such company as of right, such company shall, if the Declaration so provides, be deemed to be a body corporate for the purposes of the Act....”

[75] At paragraph 1 of the Amended Statement of Claim, the Plaintiff states that *“it is a company duly established pursuant to the Companies Act, Ch. 308 of the Laws of The Commonwealth of The Bahamas and operates in accordance with Section 13(2) of the Law of Property and Conveyancing (Condominium) Act, Chapter 139 (‘the Act’)*).

[76] This is accepted by the Defendants. At paragraph 1 of their Amended as well as Re-Amended Defence, the Defendants admitted that the Plaintiff is established to operate and manage the development of condominiums known as “Hampton Ridge” and at paragraph 5, they also admitted that the Plaintiff is responsible for enforcing the regulations and restrictions of the Declaration of Condominium.

[77] In my opinion, the issue of standing has no merit.

Conclusion

[78] For all of the reasons stated above, I make the following orders:

- 1) A declaration that the Plaintiff is entitled to enforce against the Defendants the restrictive covenant contained in Clause 3 of the Second Schedule of the Declaration of Condominium dated 28 April 2008;
- 2) A declaration that the rental or leasing of Unit 105 by the Defendants for a period of less than three months is in breach of the Second Schedule of the Declaration of Condominium;

- 3) The Defendants are to appear before the Court on Wednesday, 18 July 2018 at 10.00 a.m. to show cause why they should not be sentenced for Contempt of Court.
- 4) A perpetual injunction restraining the Defendants whether acting by themselves or their servants or agents or otherwise howsoever from carrying on or authorizing or permitting the rental or leasing of their Unit for a period of less than three (3) months.
- 5) Damages for breach of covenants contained in the Declaration of Condominium. Such damages are to be assessed on Wednesday, 18 July 2018 at 10:00 a.m.
- 6) Interest pursuant to Section 3 of the Civil Procedure (Award of Interest) Act 1992 upon the assessment of damages.
- 7) The Defendants are to be pay costs to the Plaintiff. The Plaintiff claims full/indemnity costs. The Court will hear Counsel on Costs on Wednesday, 18 July 2018 at 10:00 a.m.

Dated this 30th day of May, A.D., 2018

Indra H. Charles

Justice