

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2013/CLE/GEN/FP/00310
BETWEEN

IN THE MATTER of a Declaration of Condominium dated the 20th of October 1975 recorded in the Registry of Records in Volume 2471 at pages 16 to 49 and declared by David Keith Griffiths with respect to property known as Newport condominiums in the city of Freeport on the Island of Grand Bahama one of the Islands of the Commonwealth of The Bahamas.

IN THE MATTER of a Declaration of Condominium dated the 31st of October 1977 recorded in the Registry of Records in Volume 2834 at pages 595 to 621 and declared by David Keith Griffiths with respect to property known as Newport Condominiums in the City of Freeport on the island of Grand Bahama one of the islands of the Commonwealth of The Bahamas.

AND IN THE MATTER of a Conveyance dated the 23rd day of December 2003 and made between Elizabeth Jane Dietz of the one part and Raymond and Lynn Dietz of the other part recorded in the Registry of Records in Book 8563 at pages 72 to 82 with respect to property known as Newport Condominiums unit 105 in the City of Freeport aforesaid.

AND IN THE MATTER of the minutes of Annual General Meeting of March 2008 for Newport Condominium Association and Statement of David Keith Griffiths dated March 7th 2013.

AND IN THE MATTER of the Law of Property and conveyancing (Condominium) Act Chapter 139.

NEWPORT CONDOMINIUM ASSOCIATION

AND

RAYMOND AND LYNN DIETZ

Plaintiffs

FREDERICK LEISSING

AND

GEOFFREY TITHERINGTON

AND

NANCY LEISSING

AND

SCOTT SADE

Defendants

BEFORE ***The Hon. Mrs. Justice Estelle Gray-Evans***

APPEARANCES: Tiffany Dennison for plaintiffs
Reginald Shepherd for defendant

HEARING DATES: 2014: April 4

Evans J.

1. The plaintiffs apply by Originating Summons filed on 26 July 2013 for the following relief:
 - 1) A Declaration that the Declarations of Condominium dated the 20th day of October AD 1975 and 31st of October 1977 both recorded in the Registry of Records in Volume 2471 at pages 16 to 49 and Volume 2834 at pages 595 to 621 respectively declared by David Keith Griffiths with respect to property known as Newport Condominiums in the City of Freeport on the Island of Grand Bahama one of the Islands of the Commonwealth of The Bahamas pertains to the operation and management of one Association as the intention of the developer and affirmed at the Annual General Meeting of March 2008 for the purpose of the Law of Property and Conveyancing (condominium) Act chapter 139.
 - 2) A Declaration that the conversion of common property within the Declared Association property without unanimous resolution is in contravention of the Act, the Byelaws and Declaration of the Association.
 - 3) A Declaration that any person seeking to purchase within the Association is to seek permission for such purchase and provide documentation thereon.
 - 4) Such further or other relief as to the Court might seem just.
2. The originating summons is supported by the affidavits of Raymond Dietz filed on 30 August 2013 and 1 April 2014 in which he deposes as follows:
 - 1) That on or about April 29, 1975 the Ministry of Works and Utilities Nassau, Bahamas approves Griffiths and Hodgkin's Chartered Architects as a qualified firm to be recognized as architects for the building of Newport. Moreover, on October 1975 Higgs and Johnson as counsel on behalf of the developer David Keith Griffiths filed The Law of Property and Conveyancing (Condominium) Act 1965, Declaration of Condominium for the Newport condominium. There is now produced and shown to me exhibited herein and marked "RD-1" a true copy of the declaration ("the first declaration").
 - 2) That the building erected or to be erected on Lot 7, Bell channel Road comprises a two-story building containing eight (8) units. The units comprising the building shall be numbered from 101 to 204.
 - 3) That I am advised by Keith Griffiths and verily believe the same to be true, that in or about 1976, David Keith Griffiths negotiated with all owners in Newport condominium Association to increase the total number of units from 8 to 13 units with the idea that property values would increase due to additional common property and expenses would decrease since they will be spread between 13 owners. Phase Two would benefit by the same with the addition that electric, phone, water and common property controls for Phase Two would be housed in Newport's utility room as well as share a common entrance and owners' parking. Newport Condominium Association agreed only if Phase Two included a tennis court since Newport already had a swimming pool and that would increase Newport's owners value, They would share a common entrance.
 - 4) It is therefore reasonable to assume that if the owners of a building being built next to you begin to dig up your property for their utilities and then attach them to your structure

no reasonable party would permit that to happen unless an arrangement such as above was made. Also for the next thirty (30) years all owners operated as one Condominium sharing in expenses, one insurance policy, assessments proportioned between 13 unit owners, etc David Keith Griffiths the declarant of Newport Condominiums both phase one and phase two has stated the above was the agreement between all owners. There is now produced and shown to me exhibited herein and marked "RD-2" a true copy of the statement of David Keith Griffiths provided to add clarity of the intention to unit owners that may not have been privy to the initial discussions in 1975-1976.

- 5) In October 1977, Higgs and Johnson of Freeport as counsel for the declarant filed per The Law of Property Conveyancing (Condominium) Act 1965, Declaration of Condominium for the Newport Condominium Phase Two. There is now produced and shown to me exhibited herein and marked "RD-3" a true copy of this declaration ("the second declaration").
- 6) That the building erected or to be erected on Lot 6 Bell channel Road comprises a three-story building containing five (5) units. The units comprising the building shall be numbered 105, 106, 205, 206 and 301. The developer continued the numbering sequence from Newport first phase that ended with 104 on the first floor and 204 on the second floor to starting with 105 on the first floor and 205 on the second floor.
- 7) That on or about March 1978, Frederick and Elizabeth Dietz sold Unit 104, Newport Condominium and purchased Unit 105 Newport Condominium from Developer. Further, that from 1990 to 2002 I was involved in Property Management and had Power of Attorney for his Parents.
- 8) That on or about December 2002, myself and my wife, Lynn Dietz acquired Unit 105, Newport Condominium from my mother and father's estate. There is now produced and shown to me exhibited herein and marked "RD-4" a true copy of the Deed of Gift.
- 9) That during the Annual General Meeting of March 2003, Mr Fred Leissing (Appointed Chairman) owner of Unit 205, challenged me and my wife's ownership of Unit 105. I stated that everything was completed in December 2002 and offered copy of a settlement sheet and other verification. Mr Fred Leissing as Chairman refused to recognize myself and my wife as owners and refused their right to vote. Fred stated "that notice of said and request for approval of transfer/sale to the Body Corporate of Newport condominium was not performed." I stated at prior meetings including the 2004 AGM, it was discussed that we were purchasing the unit and extensive work had been done with many owners stopping in at unit over the previous 12 months an they were made aware then. At the special meeting held July 15, 2013 Scott Sade used a proxy from Geoffrey to vote so as of yesterday he wouldn't have title in his name.
- 10) That during the Annual General Meeting of March 2004, Mr Fred Leissing again sought to challenged me who was at the meeting without my wife Lynn. Mr Leissing requested if I had a proxy from my wife for the said meeting. I then presented Fred with a copy of her proxy. It is noted by myself as unit owner and plaintiff herein that this Annual General Meeting of 2004 marked the first time since the Leissing's owned property in Newport that the majority vote was not controlled by them or their friends Paul and Carol Pyles, previous owners of Unit 106 and Unit 206. Since this time attitude of Fred Leissing is very abusive and humiliating to other units, as Mr Leissing seeks to mistreat unit owners at every given turn. There is now produced and shown to me exhibited herein and marked "RD-5" copies of abusive emails from Mr Leissing.

- 11) That during the Annual General Meeting of March 2005, a discussion occurred on the \$650,000.00, total insurance claim received, after deductibles, and work needed to restore all common property and individual units back to their condition prior to the Hurricane. It was noted that I had inquired about placing the Hurricane coverage on the property a few days prior to the hurricane hitting the island and through myself and Leath Lynch, previous owner of Unit 104, efforts were able to purchase the coverage and avoid a total loss to the owners of Newport exceeding \$750,000.00. There is now produced and shown to me exhibited herein and marked "RD-6" copy of the breakdown of insurance funds.
- 12) At the Annual General Meeting of March 2008, it was noted for the first time that there was an error made when the two buildings were built in the recording of the documents. It was agreed by unanimous vote at the meeting to record all necessary documents to keep Newport Condominium legally one association. Also it was unanimously decided that if anyone attempts to separate the two properties that Rick Hayward, President of Newport condominium be authorized to take immediate legal action to stop such attempt and keep the association as one. There is now produced and shown to me exhibited herein and marked "RD-7" a true copy of these minutes.
- 13) That at the Annual General Meeting March 2009, it was proposed that there was a necessity that documents that were needed were to be signed by every owner and therefore would be mailed out for their signatures and should be returned within six months. If not signed by all owners then the Condo Association would take the matter to court for a decision.
- 14) Within the same Annual General Meeting, I reported that from 2002 to 2009 there has been four (4) water leaks from four different sources (water line to commode and two others from bathroom sources) all from within Fred and Nancy Leissing's Unit 205 resulting in costs exceeding \$50,000 and loss of use and enjoyment of unit for months while being repaired. There is now produced and shown to me exhibited herein and marked "RD-8" a true copy of these minutes.
- 15) That on or about 25th April 2010 documents were given to all owners who were asked to sign and returned the same within 60 days regarding the correction of the error made by the developer or attorney. If we are unable to get all owners to sign then the majority voted in favor of Rick Hayward to move forward through court action to resolve in favor of one condominium association governing all thirteen units. There is now produced and shown to me exhibited herein and marked "RD-9" a true copy of these documents.
- 16) On or about the 9th February 2010, the leak to unit 105 was reported again to be coming from Fred and Nancy Leissing's unit 205 refrigerator water line, causing over \$20,000.00 in damages to my and my wife's unit plus loss of use.
- 17) On or about the 26th April 2010, an emergency Board of Directors Meeting was called to discuss the actions of William Billard, employee of Owner Geoffrey Titherington. The evening after the April AGM William Billard at 1:45 am moved Geoffrey Titherington's 65 foot boat to the adjacent slip next to my unit 105, and left the engines running until 10 am. My wife and I were subsequently woken and kept awake by the noise and bothered by the dangerous fumes. At 3am William Billard visited owner Bob Thornhill (owner Unit 103) and told him what he had done. Bob asked why would he do such a thing and William Billard said to prove a point and not to worry that he would move it back in the morning. An emergency directors and Officers meeting was called by President Rick Hayward and by unanimous vote the Board decided to send a letter to owner Geoffrey Titherington including that such behavior is unacceptable and will not be tolerated, that

he is fully responsible for the acts of his employees/friends and that causing intentional disturbance may result in further actions by the Association. Mr Titherington also received a letter from the Grand Bahama Port Authority in the same regard. There is now produced and shown to me exhibited herein and marked "RD-10" a true copy of the letter from Newport Condominium and the Grand Bahama Port Authority.

- 18) That on or about the 5th April 2012 many owners expressed concerns that a stranger was removing the tennis court fencing in order to move building materials and personal property to and from owner Geoffrey Titheringtons' unit, namely 106. Owners further complained about security, appearance and the loss of ability for use the tennis courts. When Geoffrey was asked who this person was, under what authority they were moving items through the dismantled tennis courts, he claimed that he sold the unit to Scott Sade. However, to date and despite numerous requests, the Association has yet to be provided with the details of purchase and be furnished with an application or Mr Sade to have permission to purchase in Newport Association. There is now produced and shown to me exhibited herein and marked "RD-11" a true copy of such requests and email correspondence from Mr Titherington advising of sale.
- 19) That on or about the 6th September 2012 email correspondences were provided to the owners on the query of the extension of a deck for unit 106 into the common property. Because this is common property it is noted that unanimous resolution needs to be provided. The request was also for the responses to be provided by the following Sunday. There is now produced and shown to me exhibited herein and marked "RD-12" a true copy of the email to all parties and unit owners.
- 20) That the unanimous resolution for Unit 106 to extend into a common property was denied and correspondence to the same provided. There is now produced and shown to me exhibited herein and marked "RD-13" a true copy of the letter denying the extension.
- 21) That in or about October 2012, the Association manager Tony Cooper (unit owner 106), reported to all owners "there was no real damage only the wall that blocks the gate between Nautica and Newport fell down, lots of three branches fell.: Further investigation concluded that the wall was knocked down by an individual and not the winds. This is the same wall that William Billards' employee of owner Geoffrey Titherington requested to be removed to save owner Geoffrey Titherington from having to walk around the wall in order to go between the units he owns in club Nautica and Newport. A police report was filed as vandalism. There is now produced and shown to me exhibited herein and marked "RD-14" a true copy of the complaint.
- 22) That in or about March 2013, William Billard brought a smaller boat back at 11pm and kept engaging is engine in and out of gear for over 15 minutes outside the bedroom window of my unit disturbing them while trying to sleep.
- 23) That on or about the 4th May 2013, I as elected President of Newport sent a letter out to all owners with a copy of a letter from an Attorney regarding common property and offered to meet with Geoffrey and Scott to discuss the issues. Geoffrey replied to all owners "You are not the President of Phase Two, please show your Attorney the minutes from Phase Ii election dated this year." There is now produced and shown to me exhibited herein and marked "RD-15" a true copy of the letter from Counsel and the response thereon.
- 24) That on or about the 4th May 2013, the Association manager Tony Cooper (unit owner 102 and condo Manager) reported by email that though he requested it from Geoffrey,

- he had received no proof of ownership of Unit 106 but was told that it is with his Attorney. There is now produced and shown to me exhibited herein and marked "RD-16" a true copy of the email request and information.
- 25) That on or about the 7th May 2013, we received letter from Scott Sade stating he still wants to extend his patio. Mr Sade tries to cite several examples where he felt my wife and I and other owners build curbing, flower beds, added to deck size. It was explained that no one objected to these projects, permission to enhancements provided. Moreover, the Condominium Act is clear on the aspect of a lack of objection being taken as approval, and objection has been provided herein.
 - 26) On or about the 16th May 2013, my wife and I sent an email to Scott Sade telling him why we are opposed to any deck being built and provided a copy of a n Opinion Letter from Counsel stating again that all owners must approve. There is now produced and shown to me exhibited herein and marked "RD-17" a true copy of the email thereon.
 - 27) On or about the 10th May 2013, Scott Sade sends email to me stating "I don't need permission from anyone in phase one and I have approval from a majority in phase two". There is now produced and shown to me exhibited herein and marked "RD-18" a true copy of this email. To date however it remains the position of the plaintiffs that unanimous resolution must be granted for the extension into common property, per the Act.
 - 28) That on or about the 20th May 2012, I sent email to Scott Sade telling him that there is only one condo Association that controls all 13 nits and said that I understand that not all agree, but this is the vote and position we are in. Moreover, that it was not for a few owners to decide and that we need to have it decided by the courts since we are unable to resolve it ourselves. There is now produced and shown to me exhibited herein and marked "RD-19" a true copy of these email exchanges.
 - 29) That on or about the 22nd May 2013, Mr Scott Sade had workers start construction, I, as President of Newport Condominium Association and as owner of Unit 105, informed him that he is not approved to build on Common Property and ordered him to stop immediately to avoid legal action.
 - 30) That on or about the 22nd May 2013, Scott Sade sent a email to me with copies to Geoffrey Titherington and Fred Leissing, that he enclosed permission from his Association, namely the alleged Phase Two and a letter from Fred Leissing as claimed President of Phase Two allowing this work to proceed, however. No copies were attached. However, as the 15th July 2013, Mr Sade attended a special meeting of Phase Two merely as a proxy holder for Geoffrey Titherington, owner of Unit 106. There is now produced and shown to me exhibited herein and marked "RD-20" a true copy of these minutes.
 - 31) That on or about the 22nd May 2013, I emailed and since no copies of any approval were attached requested Scott to email them to me. That on or about May 22, 2013 Scott Sade sent an email including a copy of a letter from Phase Two as follows. There is now produced and shown to me exhibited herein and marked "RD-21" a true copy of said email.
 - 32) One or about the 22nd May 2013, I as the unit owner of Unit 205 sent an email to Scott Sade and Geoffrey Titherington containing a Cease and Desist Notice and notifying them that the slab is in direct violation of the restrictive covenants of Newport

Condominium Phase One and Two. There is now produced and shown to me exhibited herein and marked "RD-22" a true copy of the Cease and Desist Notice.

- 33) That on or about the 23rd April 2013, Counsel sent a letter to Newport Condominium Association o the same. There is now produced and shown to me exhibited herein and marked "RD-23" a true copy of the said letter.
- 34) That on or about the 23rd May 2013, a building inspector from the Grand Bahama Port Authority, visited the work site and told the workers to stop working since they have never applied for a Permit. The workers told the Building Inspector that the building was Phase Two and the President Fred Leissing gave them permission to build on Common Property. The Building Inspector still ordered them to stop and apply for a building permit, but after he departed they finished the project.
- 35) On or about the 2nd June 2013, I, as President, opened a special meeting of the elected officers/directors of Newport Condominium Association for the purpose of determining a course of action to be taken against the unit 106 owner for building when told not to on Common property. The majority vote decided to send letters to Geoffrey and also to Scott since they refuse to supply proof as to who owns the unit demanding the addition be removed and the property restored back to the way it was before construction. Marli (Secretary and owner of Unit 204) was directed to email and send via certified mail the two letters.
- 36) On or about the 5th July 2013, I as President sent an email to the Officers and Directors of Newport asking them to vote on one of the following:
 - 1) Proceed with legal action to seek Court action to declare Newport Condominium Association as the sole governing body over all thirteen (13) units and to render a decision on the issue of the improper disposal of common property in contravention of the laws, by laws and declaration.
 - 2) Doing nothing and ignore the notification to the Association from myself and my wife, as owners, of their request for the association to protect their interests as owners, as the deem is the Condo Associations Fiduciary responsibility.
 - 3) Sustain from Voting

The results were: 4 votes in favor of 1, 0 voted for 2, 2 voted for 3 and I did not vote.
There is now produced and shown to me exhibited herein and marked "RD-24" a true copy of the said email and the responses thereon.
- 37) That on or about he 15th July 20143, Fred Leissing called an extraordinary general Meeting with al unit owners within Phase Two. Prior to the meeting, Mr Lessing stated that William Billard, representing Geoffrey Titherington would like to discuss the patio that was built. Mr Billard asked me if I had any suggestions, however I advised that I was not prepared to discuss the patio as I did not have an agenda of what was to be discussed but further advised that if Mr Billard had anything to add he could do so. No comment from Mr Billard, the meeting began. (See "RD-20")
- 38) That at the meeting the following motions were made:
 - 1) Phase Two owners that approval of the 15% assessment at the 10th March 2013 Newport AGM due the 1st August be withdrawn.

- 2) Phase Two owners will withdraw from any special assessments approved at the 10th March 2013 Newport AGM for painting Phase Two building.

Per Barry Taylor's projection of an operating deficit recommendation to Newport Condominium Owners at the 10th March 2013 AGM, Phase Two Owners will be assessed Two Thousand Dollars (\$2,000.00) per unit, to be unit for expenses, improvements and fees approved by Newport Phase Two Condominium. Payments for assessment are due by 23rd August 2013, failing which legal action will be commenced. However, on or about the 26th July 2013, Fred Leissing emailed owners placing assessments on hold. There is now produced and shown to me exhibited herein and marked "RD-25" a true copy of the said email.

- 39) That based on the above the plaintiffs are looking for a declaration to clarify that common property is not to be disposed of unless in accordance with the Act and that there is only one Association of the operation of the Newport Property per the intention of the developer.

1 April 2014

- 1) That I make this additional Affidavit as one of the plaintiffs herein and therefore I am authorized to make this affidavit on the plaintiff's behalf in support of the originating summons herein.
- 2) That I make this affidavit based on my own personal knowledge unless otherwise stated.
- 3) That I am advised by my counsel and verily believe the same to be true, that all documents such as the originating summons, affidavit in support and notice of appointment have all been served onto the defendants. There is now produced and shown to me marked herein at "RD-1" copies of service receipts.
- 4) That I am advised by my Counsel and verily believe the same to be true that prior to the filing of the appearances, the Counsel for the defendants had a telephone conference with my Counsel which outcome provided that there was not going to be an opposition to the declaration requested via originating summons. Due the lack of any other documentation filed by the defendants to date, I verily believe this to be true, that the desire of the developer is to remain as is, the association having operated as one since inception. There is now produced and shown to me and exhibited herein marked "RD-2" a true copy of the intent of the developer, Mr Griffiths.
- 5) That on or about March 23rd 2014 the AGM for 2014 was held. Under the section for new business, specifically a) the wishes on the unit owners has been made clear. There is now produced and shown to me exhibited herein marked "RD-3" a true copy of the minutes of the AGM. It is also noted that Geoffrey Titerington is just short of 90 days delinquency on his two units and the Leissing's only paid once they received a 90 day demand correspondence. These parties have a full ability to pay the scheduled maintenance on their respective units but do not do so to continue to try to create a financial hardship for Newport by delaying their payments by up to 90 days.
- 6) That it remains my believe that only the defendants have posed a problem for the Association in the past by the suggestion of a separate Association for phase one, Mr Leissing naming himself the President of a board for the same. In my opinion this is to assert control without the parameters of the law of Property Conveyancing (Condominium) Act and the bye laws that govern the Association. This was further solidified by Mr Leissing (Unit 205) granting permission for the tenant and unit owners of

Unit 206 to extend a porch into the common area of the Association. This was halted after police interaction, but the same has not been removed to date. There is now produced and shown to me exhibited herein marked 'RD-4' a true photograph showing the extension of porch of unit 206 onto the common areas.

- 7) That I verily believe that Mr and Mrs Leissing have a personal issue with not having free reign to conduct themselves as they wish. To sever the Association would alienate the second phase from crucial amenities. Most, if not all other unit owners agree with not severing the phases of one Association reliant upon each other and operating the same way from inception, however, perhaps Mr and Mrs Leissing believe this is of my own design and continue to be hostile to myself and my family. There is now produced and shown to me exhibited hereon "RD-3" a true copy of Mrs Leissing looking into the bedroom windows of my unit.
 - 8) Moreover, there is now produced and shown to me exhibited herein marked "RD-6" true copies of one of the Leissings striking and damaging a security camera attached under the gutter area located approximately 4 feet from their porch area. These cameras are my own personal property ad allowed to be installed for security via AGM.
 - 9) This affidavit is correct and true to the best of my knowledge, information and belief.
3. According to Ms Dennison, the crux of the issue is that there are two phases of the condominium, but they have operated as one [phase] for 30 years. The defendants have in the last 2 years decided that phase two would become a separate entity without seeking a resolution or going through the bylaws or the Act with reference to acceding. However, to divide the associations/condominiums/phases would leave one half of the association without any of the amenities: electricity, water, the common properties.
 4. It is not disputed that there are two Associations. One was established in 1975 and the other in 1977. Newport condominium and Newport Condominium Phase two respectively. There are two declarations.
 5. Section 6(4) of the Act provides that the declaration when recorded is binding on the owners of all units in the building to which it relates. The Act clearly recognizes the necessity to empower those unit owners in appropriate cases to amend the declaration and to this end it requires that the declaration contain provisions for such amenities.
 6. The declaration is the foundation stone on which the entire legal edifice in the Act is build.
 7. Submissions on behalf of the defendants:
 - 1) The Act gives power to the declaration which creates the Association.
 - 2) There is nothing in the Act that deals with what the plaintiffs are trying to do put the two declarations together.
 - 3) However, Clause 18 of the declaration clearly states that the assent of all owners is needed to amend the declaration and it is only through that amendments that the two can legally come together as one.

- 4) Counsel for the plaintiff has pointed to no law or precedent stating how or where this is its jurisdiction he's outside of the Act or the Declarations to put these two declarations together.
- 5) The Act gives power to the declaration and the declaration gives powers to how it is and that is the only way, it can be amended.
- 6) Section 23 of the Act provides that:
- 7) It appears that the owners of Newport I are seeking to impose their byelaws on Phase 2 or not being unit owners of Phase 2 are seeking to force Phase 2 to enforce their byelaws.
- 8) They may have been operating the same way for 30 years but it was illegal.
- 9) The unanimous were referred to at paragraphs 12 and 13 of the affidavit stating that it was agreed to keep Newport Condominium legally one Association it must be noted that the unanimous vote did not include the majority of the unit owners in phase 2. It might have been a unanimous vote for Phase 1 but not for Phase 2.
- 10) Paragraph 13 of the Affidavit – It seems as if even at their own Annual General Meeting that they seem to accept that the only way they can amend the declaration is through the assent of all the owners, which they attempted to get.
- 11) Because legally in accordance with the Act they are not able to move forward, they seek this round about way to get a declaration which the Court has no jurisdiction to make.
- 12) There is nothing suggested in any of the documents before the court that shows how the Associations can come together unless the declaration is amended.
- 13) That is why the defendants say there is no locus standi for Newport I to bring this action as a stranger to the declaration cannot enforce the byelaws and the covenant that are contained therein.
- 14) Only three of the defendants are unit owners (Mr Sade is a proposed unit owner) of Phase 2.
- 15) Newport Condominium Association is separate and distinct from Newport 2, and therefore has no standing to bring anything in this action.
- 16) Ask that Newport be struck out because Newport 2 owners are not bound by the declarations and byelaws of Newport Condominium
- 17) Dietz owns a unit in beach Phase and has locus standi. However, we challenge his right to bring the action on the clean hands doctrine.
- 18) Paragraph 25 of his affidavit is an admission there that he himself is building on the common property and the basis upon which he was allowed to do so.
- 19) By the Court making a declaration about building on common property it has to be made in accordance with either the Declaration or the Act or Byelaws.

20) Dietz can't seek to enforce that which he is in breach himself. Although he says he got permission he has produced none.

The only person who could have given him any permission is Phase 2.

21) If there are any personal issues it should be brought by a writ action.

8. Dennison

- Accept there are 2 phases, but one Association has been managing all the property for 36 years. Just because there are two phases does not mean there has to be two management Associations.

9. Mrs Dennison accepted/there is no dispute that there are two declarations and two phases of the condominium and two Associations provided for. It appears that they have operated/been managed by one Association since the property was declared subject to the Act.

10. It seems to me as I pointed out to counsel that it is up to the unit owners if they wish to change the position they may do so by amending declaration to provide for an umbrella Association.

Dated this 26th day of September A.D. 2014

Estelle G. Gray-Evans, J