

**COMMONWEALTH OF THE BAHAMAS**

**2020/CLE/gen/00147**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**BETWEEN**

**(1) BRYAN BRADLEY  
(2) ROBERT DEVINE  
(3) JACK JAWITZ  
(4) GEORGE LEVINE  
(5) VINCENT P. SNEAD II  
Plaintiffs**

**AND**

**(1) THE INN AT OLD BAHAMA BAY CONDOMINIUM I  
(2) THE INN AT OLD BAHAMA BAY CONDOMINIUM II  
(3) THE INN AT OLD BAHAMA BAY CONDOMINIUM III  
Defendants**



BEFORE: The Honourable Petra Hanna-Adderley

APPEARANCES: Mr. Jacy Whittaker for the Plaintiffs

Mr. Raynard Rigby along with Ms. Shade Monroe for the Defendants

HEARING DATE: August 24, 2022

**RULING**

**Hanna-Adderley, J**

This is an application for an interlocutory injunction by the Plaintiffs.

1. The Plaintiffs by way of an Ex Parte Summons filed August 8, 2022 make an application pursuant to Order 29 of the Rules of the Supreme Court (“RSC”) and under the court’s inherent jurisdiction for an Order: (1) restraining the Defendants and others from purporting to conduct a board meeting on behalf of the Defendants herein; (2) preventing Island Ventures Resort & Club Ltd. (IVRC”) from acting or purporting to Act as the body

corporate for the Defendants; (3) restraining the Defendants and others including Mr. John MacDonald or others taking any steps whatsoever to carry out the duties required to be done by the Body Corporate of the Defendants; (4) restrain the Defendants and others including Mr. John MacDonald and others from threatening or taking any actions to discontinue the Plaintiffs' access and /or essential services to the Plaintiffs' units; (5) restraining the Defendants and others, including Mr. John MacDonald and others from demanding sums allegedly due to the Defendants until an accounting can be conducted; (6) that the Defendants provide audited accounts; (7) that the Defendants provide among other things copies of the records in chronological order of the receipts and expenditures arising from the operation of the property; (8) that an account be taken between the Plaintiffs and the Defendants as to the amount due for maintenance charges and special assessments due by the Plaintiffs; (8) that the Defendants immediately comply with the previous Order filed herein; restraining the Defendants and others including Mr. John MacDonald from demanding payment of sums allegedly due to the Defendants until disclosure under the previous Court Order; (9) restraining the Defendants and others from seizing and selling the Plaintiffs' interest in the Plaintiffs' Units;(10) appointing Deanna Mosko-Batello or some other suitable person as an Administrator over the Defendants to maintain the status quo;(11) further or other relief and (12) costs.

2. The Plaintiffs rely on the on the Affidavits of Mrs. Sheila Taylor filed on August 8 and August 24, 2022, and of Deanna Mosko-Battello filed herein on August 22, 2022 and Skeleton Arguments filed on August 8, 2022.
3. The Defendants rely on the Affidavit of Ms. Shade Munroe filed on August 23, 2022 in opposition to the Plaintiffs' application and on Skeleton Arguments dated August 23, 2022.
4. On September 14, 2021 I made the following Order (“**the Disclosure Order**”):  
“1) The Defendants provide the Plaintiffs and/or its legal counsel with the following documents:
  - a. Copies of the Declarations of Condominiums (inclusive of any amendments) of the Defendant Associations.
  - b. Copies of the unaudited financial accounts of the Defendant Associations for the previous three (3) years. Any matters arising from the Defendants’

unaudited financial statements after a review of the same by the Plaintiffs shall be and are hereby adjourned sine die.

- c. Copies of the insurance policy(ies) over the Defendant Associations and confirmation from the insurance company that the insurance premiums are current and paid.
  - d. Copies of the Management Agreements between Island Ventures Resort & Club Ltd. and the Defendant Associations.
  - e. Confirmation of the Board Members of the Defendant Associations for the previous three (3) years.
  - f. Copies of the minutes of Board Meetings of the Defendant Associations for the previous three (3) years and together with any Board Resolutions which affect the Defendant Associations. Any matters arising from the Minutes of the Board Meetings or the said Board Resolutions of the Defendant Associations after a review of the same by the Plaintiffs shall be and are hereby adjourned sine die.
  - g. Copies of Minutes from the Annual General meetings of the Defendant Associations for the previous three (3) years.
- 2) The Defendants shall allow the Plaintiffs (inclusive of any the Plaintiffs' agents and/or its legal counsel) to inspect any and all (i) records (inter alia, invoices, bills, receipts and expenditures and any other records) arising from the operation of the property by the Defendants (inclusive of the purported management company), and (ii) vouchers authorizing payments, of the Defendant Associations. The Defendants shall revert to the Plaintiffs within 3 weeks as to whether the Plaintiffs will be permitted to have copies of such inspected documents at a cost of \$1.00 per page or scan the same by Smart Phone. In default the parties shall have liberty to apply to the Court for a determination of this issue.
- 3) The activity mentioned at paragraph 2 above will take place at an address to be provided by the Defendants within 3 weeks from today's date upon reasonable notice being provided.

**AND** the costs of this application be costs in the cause.”

5. The Plaintiffs contend in their Originating Summons filed herein on December 10, 2020 that between them they are owners of Units in each Association. That on about November 17, 2020 Island Ventures Resort & Club, Ltd. (“IVRC”), the purported management company for the Associations, sent a notice on behalf of the Defendants of an upcoming



meeting. In anticipation of the meeting the Plaintiffs requested various documents from the Defendants. The Plaintiffs also complained of a lack of audited accounts; that they were not aware of which unit owners were running for reelection or otherwise nor was an agenda circulated prior to the meeting. Of greatest concern for the Plaintiffs was the apparent delegation of the management of the Defendants to IVRC, of which none of the Plaintiffs were shareholders, and the legal connection between IVRC and the Defendants. Despite these inquiries IVRC purported to hold the annual general meeting.

6. The Defendants contend that the application is not necessary and that the Defendants have not refused to disclose information to the Defendants. That on repeated and numerous occasions the Plaintiffs were sent information via email. That in or about November 2001 the Defendants agreed not to have audited financial. That certain documents related to the Defendants are recorded in the Registry of Records and the Defendants are free to access them at any time. That the Plaintiffs were informed that they do not have a right to a list of the unit owners. That the only documentation not provided were audited statements.
7. Section 21 (1) of the Supreme Court Act, Order 29 of the RSC and the inherent jurisdiction of Court empower the Court to grant interlocutory injunctions in all cases which it appears to the court to be just and convenient to do so. Section 27 of the Law of Property and Conveyancing (Condominium) Act (“**the Act**”) provides that 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, and that 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 the Act. Section 17 of the Act grants to unit owners the statutory right on its face to audited annual accounts.
8. Having read and considered the Affidavit evidence and the submissions and having considered the law, in particular the principles found in **American Cyanamid Co. v Ethicon Ltd.** [1975] 1 All ER p. 396, an authority which Counsel for the parties referred the Court to and the other authorities cited, the Court makes the following findings:
9. **Serious issue to be tried:** The first consideration that must be given before granting an interim injunction is whether there is a serious issue to be tried. Having considered both

parties submissions and the evidence before the Court I am satisfied that there is prima facie evidence that documents and records to which Unit owners may be entitled to have access under the Act are being withheld by the Defendants and that there is a dispute as to the beneficial ownership of IVRC and its authority to manage the Defendants which can only be determined at trial.

10. **Adequacy of Damages:** At this juncture financial state of the Defendants is not known due to the lack of information being disseminated to the Unit owners whose chief complaint is the lack of transparency by the Defendants or IVRC on their behalf. The actions of the Defendants may result in the sale of the Units owned by the Plaintiffs for non-payment of maintenance and special assessments as a result of this dispute and damages in this case would not be an adequate remedy.
11. **Undertaking as to damages:** The Court should also consider whether the Plaintiffs can provide an undertaking in damages to compensate the Defendants should it be later determined that the injunction was wrongly granted. Damages would be an adequate remedy for the Defendants should it transpire that the injunction ought not to have been granted. The Plaintiffs own real property within the jurisdiction value of which upon a sale would satisfy a judgment for damages herein. The Court is satisfied that the
12. **Balance of Convenience:** If the Court is incorrect in finding that the Plaintiffs are able to provide an undertaking in damages, or that damages would be an inadequate remedy, or if there is any doubt in this regard, the Court ought to consider in whose favor the balance of convenience lies. Having considered the evidence and having accepted the submissions by Mr. Whittaker the Court is satisfied that the balance of convenience lies in favor of the Plaintiffs and in maintaining the status quo.
13. **Suitability of Deanna Mosko-Battello:** Mrs. Mosko-Battello is licensed Realtor employed by a well established Real Estate company, who has been affiliated with the Bahamas Real Estate Association since 2004 and who is a property manager. In her affidavit she outlines some of the services which she provides for clients which in my view would be in keeping with the skills required in managing the Defendants. Her qualifications to act as an Administrator have not been challenged by the Defendants. The Court finds her suitable to act as an Administrator of the Defendants should the need arise.

14. Having considered the said findings at this juncture, having accepted in part the submissions of Counsel for the Plaintiffs and having applied the principles laid out in **American Cyanamid** I have come to the determination that the Plaintiffs application for injunctive relief ought to be granted in part and I make the following ORDERS:

- (1) The Defendants, its officers, directors, servants, agents, employees are hereby restrained from threatening or taking any actions whatsoever to discontinue the Plaintiffs' access and/or essential services to the Plaintiffs' units.
- (2) The Defendants, its officers, directors, servants, agents, employees are hereby restrained from demanding payment of sums allegedly due to the Defendants until an accounting can be conducted and the Court has determined what is due to the Defendants and;
- (3) The Defendants are directed to provide at this juncture unaudited accounts within 14 days from the date of this Order.
- (4) The Defendants are to provide copies of the detailed and accurate records in chronological order of the receipts and expenditures arising from the operation of the property, including any vouchers authorising any such payments as are required under Section 17 of the Act within 14 days of this Order.
- (5) Once unaudited accounts are provided to the Plaintiffs, the Defendants are directed to provide an accounting to the Plaintiffs as to the amount lawfully due by way of lawful maintenance charges and/or lawful special assessments due by the Plaintiffs to the Defendants in respect of the said Units.
- (6) The Defendants shall fully comply with the Discovery Order of this Court filed herein by providing the documents stated to be missing referenced in the said Second Affidavit of Sheila Taylor within 21 days failing which Deanna Mosko-Battello shall be and is appointed to act as Administrator of the Defendants until further order of the Court.
- (7) The Defendants, its officers, directors, servants, agents, employees, or whomsoever are hereby restrained from seizing, selling, exercising a lien, disposing, or in any way alienating the Plaintiffs' interest in the Plaintiffs' Units under the exercise of its powers pursuant to the said Act and/or under the relevant Declaration of Condominium until further order of this Court;
- (8) The Plaintiffs shall participate and vote at any AGM convened by the Defendants notwithstanding that the amount of the sums due by them to the Defendants are in




dispute and remain unsettled. The sums due to the Defendants by the Plaintiffs shall be determined by this Court in these proceedings and paid to the Defendants by the Plaintiffs immediately upon such determination.

Costs

15. Costs are always in the discretion of the Court and as such costs usually follow the event save for unusual circumstances or exceptions to justify the departure from that rule exist. I see no such unusual circumstances or exceptions. Therefore, the costs of and occasioned by this application shall be paid by the Defendants and the Plaintiffs shall not be liable for any contributions thereto by way of any contribution or special assessment lawfully levied by the Defendants on the Unit owners for payment thereof.

This 17<sup>th</sup> day of November, 2022

  
Petra M. Hanna-Adderley  
Justice