

IN THE SUPREME COURT OF BELIZE A. D., 2013

CLAIM NO. 256 OF 2010

BETWEEN (PROPRIETORS OF STRATA CLAIMANT

(PLAN 10

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(AND

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(DAC HOLDINGS LIMITED

DEFENDANT

BEFORE THE HONORABLE MADAM JUSTICE MICHELLE ARANA

Mr. Estevan Perera of Glenn Godfrey and Company for the Claimant

Mrs. Ashanti Arthurs Martin of Courtenay Coye LLP for the Defendant

J U D G M E N T

1. This is a Claim for the payment of strata fees in the sum of BZ \$33,200.00 which the Claimant Company states it is owed by

the Defendant Company as monthly financial contributions towards the management, maintenance, control and administration of the Common Property of the development known as Royal Palm Villas. These fees are assessed by the Claimant Company based on the fact that the Defendant Company owns two units in its development.

2. The Defendant Company argues that the Claimant Company is not entitled to the fees claimed because even though it holds two separate titles under the Strata Plan, DAC Holdings Limited only owns one unit and not two separate units.

Facts

3. The Defendant Company, DAC Holdings Limited, is the registered proprietor of Parcels 3841 (H14) Block 7 San Pedro Registration Section containing an approximate area of 789 square feet and Parcel 3841 (H16), Block 7, San Pedro Registration Section containing an approximate area of 789 square feet. The Defendant Company holds title to Parcel 3841 (H14) by virtue of Land Certificate No. 7920/2006 dated 19th July, 2006 (Exhibit PP9).

DAC Holdings Limited also holds title to Parcel 3841 (H16) by virtue of Land Certificate No. 7922/2006 dated 19th July, 2006 (Exhibit PP 10).

4. On April 9th, 2004, DAC Holdings Limited agreed to buy both parcels from one Shirley Taylor (Exhibit PP8). The Claimant Company held an extraordinary general meeting on November 13th, 2004 where it was decided that the monthly fee payable by homeowners would be increased to BZ \$500.00 dollars to cover the increased costs of annual insurance premiums. The Defendant has refused to pay the increased fees. In March 2012 the Proprietors of Strata Plan 10 held a meeting to discuss the fact that fees must be brought into compliance with the Strata Registration Act. No resolution was passed at that meeting but a notice was issued to all owners by the Claimant informing them that in order to comply with the statute, fees would now be charged based on size of units owned. On April 19th, 2010 a caution was placed by the Claimant on Parcel 3841 (H16) in pursuance of the unpaid maintenance fees (Exhibit PP4).

Issue

5. Is the Claimant Company, the Proprietors of Strata Plan 10, entitled to collect the fees claimed from the Defendant Company DAC Holdings?

The Claimant called four witnesses to substantiate its Claim. Dana LeTendre testified that the Claimant had instituted legal action against the previous owner Ms. Taylor to recover fees she owed on two units. Ms. Taylor tried to sell her strata lots to the Defendant Company in 2004 but legal action was brought against her by the Claimant to prevent her from transferring title to the Director of the Defendant Company, Ms. Dee Thomas, until all outstanding fees on the units were paid in full. Mr. LeTendre further testified in his witness statement that at this time, he was a member of the Executive Committee of the Claimant and he personally went to speak to Dee Thomas about the dispute, as he wanted to make sure that she was aware of their position regarding two sets of fees, one for each title. He said he told Dee Thomas before she bought the property of the fact that Ms. Taylor acknowledged that there were two titles and that she had

exercised her right to vote in respect of each title. Under cross examination Mr. LeTendre stated that Ms. Taylor told him she would have to go to Belmopan to change her two titles to one title.

6. Ms. Paula Palaza testified that she is a member of the Executive Committee of the Proprietors of Strata Plan 10 and that she has sent two demand letters to Dee Thomas dated 1st June, 2009 and 3rd July, 2009. She further stated that on 26th February, 2010 her attorney sent another letter of demand to Ms. Thomas requesting the Defendant to pay the outstanding fees. She explained that even though the Defendant owns two strata lots H14 and H16, the Defendant has only paid maintenance fees for H14. Apart from one payment made for H16, the Defendant has refused to pay any further contributions toward H16, and at 31st December, 2009 the Defendant owed BZ \$33,200.00 to the Claimant in unpaid fees. There is in evidence (Exhibit PP3) a receipt dated No. 256 dated July 12th, 2005 for payment received from Dee Thomas in the sum of \$1,500.00 for Unit 4B and Unit 4D. Ms. Palaza states that the Defendant is obligated to pay twice the amount of fees based on the size of the unit which is twice the size of a single unit. She also

tendered photographs she had taken of the Defendant's property. Ms. Palaza was cross examined extensively by Learned Counsel for the Defendant Mrs. Arthurs Martin as to whether the property owned by the Defendant is physically two self-contained units or one. Her response was as follows:

"A. It has two water heaters. It has two separate electrical units. It has two areas with sinks. It has two bathrooms. It has two bedrooms and it's a mirror image of each other.

Q. So it has two separate kitchens?

A. One is used as a wet bar but all the apparatus the plumbing is there for a full kitchen.

Q. You are plumber so you know whether it's a different plumbing or the same plumbing or different electrical or the same electrical? Are you a plumber or an electrician?

A. I can see the pipes, Ma'am."

Later on under cross examination Ms. Palaza explained further:

“There are two meters outside and there are two water connections outside that go into that unit as well. There are two meters outside the building, two water units.”

7. Mr. Germain Tillett and Mrs. Laura Schmitt also testified on behalf of the Claimant. Mr. Tillett was employed by the Claimant Company as its Bookkeeper in January 2011 and Mrs. Schmitt was appointed as Treasurer of the Claimant’s Executive Committee in 2011. Both witnesses reiterated the Claimant’s position that fees are levied based on the size of the condominiums and that the sizes of the condominiums vary. Mrs. Schmitt admitted under cross examination that in March 2012 the Claimant did not pass a resolution to change the fees, but the members agreed among themselves that the fees had been calculated incorrectly to date and that the appropriate time to change to the correct fees was at the beginning of the fiscal year. A notice was sent to all owners stating the need to comply with the Strata Registration Act of Belize. Prior to this decision all members had been paying a flat fee

of BZ \$500.00 regardless of the size of their unit. Since April 2012 the fees have been increased to reflect the respective size of the units and to comply with the Act. Under cross-examination she was questioned about the variation in fees as per size of unit as follows:

“Q. I understand that there is a smaller unit than the 789. That person would be paying a smaller assessment?”

A. Yes. Essentially the calculation is for this year \$0.51 cents per square foot. So in the case of James Janmohammed 1,477 square feet times \$0.51 cents gives you \$833.00. Someone who has 789 square feet on their title, it comes out to \$450.00. We have the smallest one has almost 600 square feet and so their assessment is only \$319.50.”

8. On behalf of the Defence, there were only three witnesses called. Ms. Dee Thomas testified that she was the Director and shareholder of the Defendant Company. She said in her witness statement that her unit was never intended to be two units and the existence of two separate titles resulted from an error by the surveyor. She states that she was a member of the Executive

Committee of the Claimant from 2007 up to December 2010 when she resigned. She states that strata fees have always been charged per unit and not per title, and that these fees have never been based on the size of a member's unit. Under cross examination by Learned Counsel for the Claimant Mr. Perera, Ms. Thomas agreed that the Defendant owned two titles for two lots with an area of 789 square feet each and that the total square feet when added together equals 1578 square feet. She also admitted that she was not aware that if she were to seek to merge the two titles the Defendant owns into one, she would first need the consent of the other owners.

9. Mr. Jan Janmohammed testified on behalf of the Defendant that he is the developer of Royal Palm Inn and that the units were being sold as pre-construction units. He said that the unit owned by the Defendant had been custom designed by him for the previous owner Ms. Shirley Taylor, as one-self- contained unit with no dividing walls and no separate electrical or water supply to the second floor. He said that he was under pressure to get the strata titles registered and so he hired Roque Marin, licensed Land

Surveyor, to draft the Strata Plan for buildings 1 to 7. He stated that the title to the strata lots are issued based on strata plan and that as a consequence of Mr. Marin's error Shirley Taylor was issued with two titles to two units each measuring 789 square feet although physically there is only one unit. He said that he discussed with Ms. Thomas the issue of rectifying the titles to reflect one unit instead of two but that he was not able to do so due to the caution lodged against her property by the Claimant in 2010. Under cross examination by Mr. Perrera, he admitted that he never sought legal advice regarding the issue of rectification of the titles.

10. Ms. Ana Lausen stated that she was the Accountant for the Claimant from July 2007 to January 2011. In that capacity she generated all invoices; she also stated that all accounting records up to 2009 when Ms. Thomas resigned as Treasurer of the Executive Committee showed that the Defendant was assessed for only one unit and that the Defendant promptly paid all fees due for that unit. She said that upon Ms. Thomas' resignation from the Executive Committee of the Claimant in 2009, Ms. Palaza instructed her to issue an invoice to the Defendant with respect to

the second title. She said that she generated the invoice but never served it on the Defendant. She said that during her tenure as accountant assessments were based on unit not on titles. Under cross examination by Mr. Perera for the Claimant, Ms. Lausen agreed that she did not know that the Defendant purchased both titles in 2006. She also agreed that unit refers to living space.

The Law

11. The Strata Titles Registration Act Chapter 196 of the Laws of Belize RE 2000 reads as follows:

Section 4 (1) *“Every strata plan shall -*

(a) State the full reference of the parcel and be described as a strata plan;

(b) Delineate the boundaries of the parcel and the location of the building or buildings in relation thereto;

(c) Include such elevations, sections, plans, diagrams and other information as shall be sufficient to -

(i) Illustrate the strata lots and distinguish each lot by a number;

- (ii) *Define the boundaries of each strata lot in the building or buildings by reference to floor, walls and ceilings; provided, however, that it shall not be necessary to show bearings or dimensions of the strata lots; and*
- (iii) specify the approximate floor area of each strata lot;**
- (iv) have endorsed upon it a schedule setting out the unit entitlement of each strata lot indicating as a whole number the proportion of the common property allocated to that strata lot;**
- (v) ...” (*Emphasis added*)

Subsection (4) of section 4 deals with unit entitlement as follows:

“The unit entitlement of each strata lot shall, as respects the proprietor of such strata lot, determine -

- (a) the quantum of his share in the relevant corporation; and*
- (b) The proportion payable by him of contributions levied pursuant to paragraph (b) of subsection (2) of section 6; (Emphasis added)*
- (c) the proportion of land tax and/or property tax payable by him, whether jointly or severally, pursuant to this Act.”*

Section 6(2) of the Act addresses the power of the Corporation to levy fees on the proprietors for the administration and management of the common property and other obligations:

“The powers of the Corporation shall include the following:

- (a) To establish a fund for administrative expenses sufficient in the opinion of such Corporation **for the control, management and administration***

of the common property, for the payment of any premiums of insurance and for the discharge of any of its other obligations;

(Emphasis added)

*(b) To determine from time to time the amounts to be raised for the fund referred to in paragraph (a) and to raise amounts so determined by levying contributions on the proprietors **in proportion to the unit entitlement of their respective lots.***

(Emphasis added)

(c)”

12. To my mind, the law is very clear. The statute requires in the mandatory language of Section 4(1)(c) that the Strata Plan shall illustrate each strata lot and distinguish each lot by number and specify the floor area of each strata lot. Section 4(1)(d) goes on to state in clear and unambiguous language that the Strata Plan must have a schedule showing unit entitlement of **each lot** and a **whole number showing the proportion of common property** allocated to that strata lot. Obviously the need for this specific information is

based on the fact that the Act authorizes the corporation to levy fees based on the unit entitlement of the strata lots. Clearly, the size of the floor area of each unit determines how much fees the proprietor has to pay. So, it follows that the greater the size of the unit/lot, the greater the amount of fees. I also note the surveyor Roque Marin's side notes on the Strata Plan which defines unit entitlement as equal to square footage and I find that this in accordance with the requirements of the Strata Registration Statute.

13. In addition to the statute, the by-laws governing the Strata Plan 10 Article 43 empowers the Proprietors to levy special or annual assessment as contributions towards a fund for the management and administration of the Corporation's common property and other obligations as a charge on the strata lot, while Article 42 states that every Owner of a Strata Lot shall hold one voting share per Strata Lot as long as the Owner is a member in good standing.

14. I find it curious that Ms. Thomas and DAC Holdings Limited have been unable or unwilling to pay the fees demanded by the Claimant, especially in light of the terms of the Sale Agreement which she signed with Ms. Taylor in 2004. That agreement very clearly stated that the Defendant Company was purchasing two separate units. In the sale agreement, the property is described as follows:

“A. Parcel 3841/H14 Block 7, San Pedro Registration Section, Commonly known as **Condominium Unit 4B** of Strata Plan No. 10 aka Royal Palm Belize.

B. Parcel 3841/ H16, Block 7, San Pedro Registration Section, commonly known as **Condominium Unit 4D** of Strata Plan No 10 aka Royal Palm Belize.”

15. So even if one were to accept Ms. Thomas’s argument that she was only obligated to pay fees assessed per unit and not per title, her agreement for sale clearly shows she purchased two units: 4B and 4D. She is therefore required to pay fees for both units. This court also does not accept the argument that she was going to get

the titles rectified but was unable to do so because of the caution placed on the property by the Claimant. She bought the properties in 2004. The caution was lodged in 2010. One is left to wonder why she did not get the titles changed in the intervening six years. I find her obstinate behavior in refusing to pay fees for two units, knowing full well that she had bought two units and not one, to be extremely disrespectful and unreasonable, and the Proprietors have been more than patient with her in waiting until 2010 to lodge that caution and to seek to recover their fees. It does not matter whether the physical layout of the building appears to be one unit or half a unit or twelve units. It also does not matter what the developer or the previous owner intended to design; the fact remains that according to the Strata Plan which governs the distribution of all the units in the entire enterprise, she purchased two separate units, Unit 4B and Unit 4D. She is therefore entitled to two units and legally responsible to pay fees in relation to two units.

16. I therefore find that the Proprietors of Strata Plan 10 are fully entitled under this Act to levy the fees against DAC Holdings Limited for both units and I order that the Defendant pay the outstanding sums of \$33,200.00 plus interest pursuant to Section 166 of the Supreme Court of Judicature Act forthwith.
17. Fixed Costs are awarded to the Claimant to be paid by the Defendant in the sum of \$3,132.50

Dated this 31st day of July, 2013

**Michelle Arana
Supreme Court Judge**