[2015] JMSC Civil 159

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. HCV 01573 OF 2015

IN THE MATTER of all that parcel of land being part of Lot numbered A THIRTY ONE on the plan of part of TORBAY, RECLAIMED LANDS AND BOGUE ISLAND now called MONTEGO FREEPORT in the parish of SAINT JAMES being the Strata Lot numbered NINE on the Strata Plan numbered Four Hundred and Forty and Sixty One Undivided 1/100,000th shares of the common property therein and being all of the land comprised in the Certificate of Title registered at Volume 1229 Folio 675, of the Register Book of Titles in the name of Maco Management Inc.

BETWEEN	**MACO MANAGEMENT INC.**	**APPLICANT**
AND	**THE PROPRIETORS, STRATA PLAN 440**	**1st RESPONDENT**
AND	**STRATA APPEALS TRIBUNAL**	**2nd RESPONDENT**

Mrs. Denise Kitson, Q.C and Ms. Khian Lamey, instructed by Grant, Stewart, Phillips & Co. for the applicant.

Mr. Seyon T. Hanson, instructed by Seyon T. Hanson & Co. for the 1st respondent.

Ms. Monique Harrison, instructed by the Director of State Proceedings for the 2nd respondent.

Application for Leave to Apply for Judicial Review - Rule 56 of the Civil Procedure Rules (CPR) – Whether Requirements Satisfied – Whether Strata Corporation in Breach of National Water Commission Act and Office of Utilities Regulation Act – Whether Decision of Strata Appeals Tribunal Irrational and/or Unreasonable.

IN CHAMBERS

Heard: May 7 and 14; and July 27, 2015.

Coram: F. Williams, J.

Nature of Application

[1] In this matter the applicant seeks the court's leave to apply for judicial review, seeking, in the main, the following orders of certiorari:

> "i. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that Proprietor Strata Plan 440 (also hereinafter referred to as "PSP 440") was not supplying or distributing water on or within the premises of PSP 440 to the proprietors and or occupants of PSP 440, contrary to the National Water Commission Act and the Office of Utilities Regulation Act.
>
> ii. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that it was within the power of PSP 440 to amend its By-laws, without informing all the registered proprietors of the strata lots of the Extraordinary General Meeting of PSP 440 purportedly held, at which time the By-laws were amended, such instrument of amendment dated 9th November 2011 being lodged at the National Land Agency (Office of Titles).
>
> iii. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that it was within the power of PSP 440 to amend its By-laws to raise money to offset the increase of the imposition of usage and sewerage charges by the NWC and that PSP 440 could "levy" these charges against the proprietors in accordance with section 5(2) (b) of the Act.
>
> iv. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that the payment of water rates by (sic) the NWC was an obligation imposed on PSP 440, for which PSP 440 is empowered to levy a charge on each proprietor of each strata lot in proportion to their unit entitlement.

v. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that the Commission of Strata Corporation had correctly and validly issued a Certificate Pursuant to Exercise of Powers of Sale in respect of Strata Lot numbered 9 to Proprietor Strata Plan 440 registered at Volume 1229 Folio 675 of the Register Book of Titles in the name of Maco Management Inc."

[2] Also being sought in the Notice of Application dated the10th day of March, 2015 (and filed on the 11th day of March, 2015), are several declarations. These largely relate to the same issues in respect of which the orders of certiorari are being sought. It is accepted by the parties, however, that, on a proper interpretation of the rules, no leave is required to be sought for the grant of these declarations. With this interpretation, the court is in agreement, declarations being in the nature of "administrative orders", for which, pursuant to rule 56, and rule 8.6, no leave is required.

The Grounds of the Application

[3] These are the main grounds of the application:

i. The orders and or findings made by the Strata Appeals Tribunal are unreasonable, irrational and illogical.

ii. The decisions made by Proprietors Strata Plan 440 are unlawful, unreasonable, irrational and illogical.

iii. All registered proprietors were neither present at nor notified of an extraordinary general meeting held in 2011 at which a decision was taken to amend the by-laws allowing PSP 440 to levy an interim increase in maintenance charges on its members to defray the cost for sewerage imposed by the NWC, this failure being in breach of section 9 of the Registration (Strata Titles) Act.

iv. PSP 440 supplies water to the registered proprietors of the strata lots within the meaning of section 26 of the

NWC Act, without having the required licence to do so, and/or without the consent of the Office of Utilities Regulations (OUR) or the NWC.

v. The Commission's certificate granting a power of sale to PSP 440 in respect of the applicant's strata lot was issued improperly and without the fulfillment of the legal requirements for doing so.

vi. Its appeal to the Strata Appeals Tribunal was not filed out of time.

The Relevant Provision – Rule 56 of the CPR

[4] The relevant rule in the Civil Procedure Rules (CPR), that governs applications for leave to apply for judicial review is rule 56 – specifically, rule 56.3, along with rule 56.4 and rule 56.6. Rule 56.3 sets out the required contents of the documents that should be filed in support of or to make the application for judicial review. No issue was raised on this score by the respondents; and, in the court's view, the applicant has complied with these requirements. In particular, one consideration under rule 56.3 (3) (d) is whether any alternative remedy exists. No such alternative remedy appears to exist in this case, given the type of issues that arise for consideration in the matter.

[5] Rule 56.4 deals with the actual hearing of the application for judicial review and the various steps that may be taken by the judge who hears the application.

[6] Rule 56.6 (1) directs that applications for judicial review must be made promptly; and, in any event, within three months of the date on which the grounds for the application first arose. However rule 56.6(2) permits the court to extend the time for applications for judicial review to be filed if good reason for doing so is shown. In the instant case, the application has been filed in time: the decision of the Strata Appeals Tribunal (SAT) was delivered on December 12, 2014 and it was filed on March 11, 2015.

The Purpose of the Application for Leave

[7] What is the purpose of the requirement that an application for leave must be made in order for the court to decide whether or not leave to apply for judicial review ought to be granted?

[8] This question has been considered in a number of cases. Their existence is fortuitous and quite helpful, as the relevant rule (rule 56.3 (1)), although stipulating the requirement for the application for leave, does not (as observed by Mrs. Kitson, QC in her submissions), indicate the matters to be considered in the court's deciding whether or not leave ought to be granted.

[9] Among the cases, is one cited by counsel for two of the parties (Mrs. Kitson, QC and Mr. Hanson), that is the case of **Tyndall & others v Carey & others** (claim no. HCV 00474 of 2010), delivered on February 12, 2010, by Mangatal, J. In that case, the learned judge observed of the function of the process of the application for leave (at page 3 and paragraph 4 of the judgment), that:

> "It is important to have an understanding of the nature of the application for leave…This is not an application that can determine the substantive issues raised by the Applicants. This application is simply one that seeks the Court's permission or leave to apply for judicial review, seeking orders… The court is here acting as a gatekeeper and decides whether an applicant's case meets the threshold and ought to receive the green light to bring a claim for judicial review." (emphasis added).

[10] Also providing guidance as to the court's approach in considering whether or not to grant leave to apply for judicial review (and, in particular, addressing the question of the extent to which the issues ought to be explored), is the case of **R (Davey) v Aylesbury Vale DC** [2008] 1 WLR 878, in which Sedley, LJ made the following observation at paragraph 12 of the judgment:

> "While there may be cases in which it is necessary or helpful to explore issues in depth at this stage, such cases must be quite exceptional. The proper place for the full exploration of evidence and argument is at the hearing of a claim which has been shown at the permission stage to be arguable."

[11] Another case that underlines the court's role as "gatekeeper" at this stage of the proceedings is that of **Inland Revenue Commissioners v National Federation of Self-Employed & Small Businesses Limited** [1981] 2 All ER 93. At page 105 j of the judgment, Lord Diplock delivered himself of the following words:

> "Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived."

[12] There was another authority cited on behalf of the 1st defendant, which is also of relevance to a consideration of the court's approach at the leave stage; and which was interpreted by counsel to mean that the court's approach should be somewhat of a more searching enquiry than the other cases might be taken to suggest. The work (cited by Mr. Hanson), is that of **Blackstone's Civil Practice 2009** – Oxford University Press, at page 1072, where the following words are set out:

> "Rigorous examination by the judge is required at the permission stage of a judicial review claim so as to restrict the exploitation of judicial review as a commercial weapon by rival property developers…"

The Threshold

[13] In terms of the threshold that applicants for leave must cross in order for their applications to be successful, the parties, from their submissions, appear to be agreed

that the case of **Sharma v Brown-Antoine** [2007] 1 WLR 780 accurately sets out the current learning. Lord Bingham of Cornhill and Lord Walker of Gestinghope are reported at page 787 E of the judgment as stating:

> "The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy…But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application." (Emphasis added).

[14] Dealing with a final aspect of the court's approach in an application such as this, it should be remembered that the focus of the challenge to the SAT's decision is that the decision is irrational, unlawful and unreasonable (in the **Wednesbury** sense). In relation to these principles, we have the decision of **Associated Provincial Picture Houses Ltd. v Wednesbury Corporation** [1948] 1 KB 223. In that case, Lord Greene, MR made the following observation:

> "It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in Short v. Poole Corporation [1926] Ch 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

A Brief History of the Matter

[15] A brief history of the matter might now be apposite.

[16] The seeds that have borne the fruit of the litigation that we are now witnessing were first sown in 2010, when the NWC began to include in the bill to the PSP, a charge for sewerage. This resulted in practically a doubling of the NWC bill. The Executive Committee (the EC) of the PSP began to search for a way to offset and minimize the effects of this increase. At first the solution being contemplated was for each strata lot to have its own meter. At the end of the day, however, the decision that was taken was that the additional charge for sewerage would be passed on to the proprietor of each strata lot according to the individual owner's unit entitlement. This decision was taken at an extraordinary general meeting. One ground of challenge to the decision taken at this meeting is that the persons convening the meeting did not comply with the requirement in section 9 of the Registration (Strata Titles) Act of giving notice of the meeting to all the registered proprietors who were required unanimously (or, later, when the law was amended, three-quarters of them), to approve any resolution for amendment. This point is also being taken in light of the lodging of an instrument dated November 9, 2011 with the National Land Agency (NLA). That instrument purports to amend the by-laws of the corporation to give it rights including that of entering into agreements with the divers proprietors to provide services and amenities to the strata lots. Also, it purported to empower the corporation to withhold such services in the event of non-payment for such services and for any breach of the by-laws.

[17] Thereafter ensued the exchange of a series of letters between the applicant and the PSP, eventually involving the Commission. The main act of the Commission which caused the applicant to be aggrieved was its issuance of a certificate to the PSP to exercise powers of sale on the basis that the PSP had exhausted all means of obtaining payments from the applicant. (It should be noted that the applicant had been at times behind in its payment of maintenance charges; and, even when it sought to make the said payments, sought to do so only in respect of the amounts that were not in dispute).

[18] One main contention of the applicant is that, in order for the PSP 440 to take the course it decided to take, it needed properly to have a licence to do so, as required by the OUR Act, as it would be supplying water within the meaning of the NWC Act.

[19] On July 23, 2013, the applicant filed an appeal with the SAT. The face of the notice indicates that it was being filed pursuant to section 15 A (2) of the Act. Its appeal was dismissed by way of a decision in writing dated December 12, 2014. It is in respect of that decision that this application has been brought.

[20] That having been said, we may now turn to an examination of some of the central issues or grounds in the case in order to see whether or not the applicant has managed to cross the threshold and, as a result, leave ought to be granted.

Discussion of the Grounds

[21] In its written submissions, the applicant has set out, as its first ground, its challenge to the SAT's decision that the PSP 440 was not supplying water within the meaning of the NWC Act. Indeed, it is also the first-listed proposed order of certiorari that is being sought.

[22] The resolution of this matter will depend on the interpretation that is correctly to be placed on section 26 of the NWC Act, the relevant portions of which read as follows:

> "26. Any owner or person in possession of the whole or any part of any premises supplied with water by the Commission who sells or supplies to any person or permits any person to take any such water from the premises, except with the written approval of the Commission, shall be guilty of an offence."

[23] Going hand-in-hand with this section of the NWC Act is section 4A of the OUR Act, which provides as follows:

> "4A. No organization or body of persons shall provide a prescribed utility service without first being issued with a licence granted by the Minister to provide such service."

[24] In resolving this issue in favour of the Commission and the PSP, the SAT emphasized, for example, the phrase in section 26 of the NWC Act: "…to take any water from the premises". It was the view of the SAT that the section should be read to cover taking water from the premises and not on the premises. It considered, in arriving at its decision, that the corporation was not in the business of supplying water and that it was not making a profit.

Summary of Submissions

[25] The respondents are of the view (and so submitted) that the conclusion arrived at by the SAT in this regard, was one to which it was entitled to come on the evidence and that it should not be susceptible to judicial review.

[26] The applicant, on the other hand, submits that the conclusion at which the SAT arrived and the interpretation placed on section 26 of the NWC Act were incorrect. In fact, an erroneous interpretation was given by the 2nd respondent to the relevant provisions of the NWC Act and the OUR Act.

Discussion

[27] To my mind, it is entirely within the realm of possibility for someone to mount a plausible approach to the interpretation of the relevant section of the NWC Act that is different from that taken by the SAT. It is, in my view, amenable to a different interpretation. A plausible and convincing argument could be mounted to the effect that the SAT incorrectly focused on the aspect of taking water from the premises; rather than honing in on the phrase "supplies to any person". It could also be reasonably argued that a proper interpretation of the relevant section calls for no consideration of whether or not the entity making the supply is doing so at a profit; and that, to the extent, at the least, of those two matters, the SAT came to an entirely-wrong conclusion and placed an incorrect interpretation on the relevant section of the NWC and OUR Acts.

[28] Viewing this matter from that perspective; and bearing in mind that the threshold is for the applicant to demonstrate that it has: "…an arguable ground for judicial review having a realistic prospect of success…", it appears to me that the applicant has crossed the threshold on this point and ought to have the SAT's decision judicially reviewed. It bears repeating that it is not for me at this stage (as I understand the court's function on the consideration of an application for leave), to determine the substantive issues or explore them in depth.

[29] This finding is of no mean significance; as, I agree with those parts of Mrs. Kitson's submissions to the effect that, if the applicant should turn out to be successful on this ground, it would open the door to success on at least some of the other grounds; as it would, for example, raise questions about the recoverability of the additional disputed portion of the maintenance fee. That, in turn, was the main basis for the grant of the Commission's certificate for the sale of the relevant strata lot.

[30] I therefore wholeheartedly agree with the submission made at paragraph 58 of the applicant's written submissions which is that:

> "58. …an issue as to whether the 2nd Respondent correctly interpreted and applied the relevant provisions of the NWC Act, the OUR Act and the Strata Act are clearly amenable to judicial review. It is submitted that all other declaratory relief proposed to be sought relative to the 1st Respondent and the 2nd Respondent are consequential on the foregoing."

Was the Appeal to the SAT Filed out of Time?

[31] One finding of the SAT was that the applicant's appeal to it was filed out of time – that is, beyond a period of 30 days that, in its finding, was the period for bringing an appeal.

[32] The notice of appeal itself, however, indicates that the appeal was filed pursuant to section 15 of the Act.

[33] Interestingly, two of the parties (that is, the applicant, on the one hand, and the 1st respondent, on the other), have sought to base support for their respective cases on the same decision of this court – that is the decision of **Douglas Campbell v The Strata Appeals Tribunal and PSP No 73 (Carib Ocho Rios)** [2015] JMSC Civ 46.

[34] To my way of thinking, however, the portion of the judgment that is of most significance to the particular issue being discussed is to be found at paragraphs [23] and [24]. Those portions of the judgment read as follows:

> "[23] The sections of the Act which address the right of appeal and which may properly be considered to be appeal gateway sections are sections 3B, 5A and 15A. It is clear that the Act does not establish a rigid, tiered system of appeals and whether intentionally or not, there is an overlap in these gateway sections to the extent that section 15A provides a right of appeal already conferred by section 3B and 5A."
>
> [24] …Had the draftsman intended the 30 day deadline to apply to all appeals this could have been easily stated in section 15A. The Court is not prepared to construe the Act in such a manner as to impose the application of such a provision to all appeals made to the Tribunal."

[35] Without delving too much into the matter again, (as the authorities show that the court ought not to do as this stage), the view that I take of these portions of the judgment is that, again, the applicant has an arguable case with a realistic prospect of success in seeking to contend that its appeal was filed within time; and that the SAT was arguably wrong to have found otherwise. (This is so even though the SAT dealt

with the merits of the appeal, nonetheless, and only sought submissions on the timeliness of the filing of the appeal at the conclusion of the hearing).

[36] This, therefore, is another basis on which the court would be minded to grant the applicant leave to apply for judicial review.

Was the SAT Correct in its Application of Section 5 (2) of the Act?

[37] Among the findings of the SAT was that the payment of the water rates (including the sewerage charge) was an obligation of the PSP within the meaning of section 5 (2) (a) of the Act. The relevant parts of that sub-paragraph (along with sub-paragraph (b)), reads as follows:

> "(2) The powers of the corporation include the following:-
>
> (a) to establish a fund for administrative expenses sufficient in the opinion of the 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;
>
> (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."

[38] In opposing the application for the grant of leave to apply for judicial review on this ground, Ms. Harrison, for the 2nd respondent submitted that the SAT construed these provisions in an entirely logical and reasonable way. In support of this argument and submission she sought to lay emphasis of the phrases "to establish a fund for" and "the discharge of any of its other obligations" in sub-paragraph (a); and, similarly, the phrase "to raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective lots" in sub-paragraph (b).

[39] The applicant, on the other hand, is viewing the very basis of the passing on to the proprietors of the sewerage charge as irrational – that is, on the basis of unit entitlement, rather than actual usage or consumption. The method of allocation, in its submission, is arbitrary, inequitable, unreasonable and unfair. It will possibly have the incongruous result of a unit with one occupant and a unit with four or five occupants, both having the same unit entitlement, paying the same sum, although, quite obviously, their consumption would be very different. Further, (the submissions continue), on a proper interpretation of the sub-paragraphs, the liabilities for which the corporation would be responsible and for which they might levy contributions on the proprietors, relate solely or primarily to the common area.

Discussion

[40] Again, whilst bearing in mind the limitations on the extent to which the court might delve into the substantive issues, it appears to me that the applicant's contention of an irrational interpretation of section 5 (2) (a) and (b) of the Act; and of the allocation of the sums based on unit entitlement is an arguable one with a realistic prospect of success. The section can indeed be said to be capable of the construction that the applicant seeks to place on it. For example, looking at section 5 (2) (a), it is quite arguable that the phrase "the discharge of any of its other obligations" must have reference to and be delimited by what precedes it. What precedes it is a reference to obligations which all relate to the common property. Would its "other obligations" not have to relate to the common property? It seems to me that the applicant could, with a realistic prospect of success, mount an argument along these lines, using the *ejusdem generis* rule of statutory interpretation.

[41] And in relation to section 5 (2) (b), it seems to me that an equally plausible argument could be mounted that any contributions that it is permitted to levy pursuant to subparagraph (a) must equally relate to obligations in respect of the common property, expenses for which must be expected to be equally borne; and not affected by usage or consumption.

“Rigorous Examination”

[42] Where the earlier citation of the passage (in paragraph 13) from **Blackstone’s** is concerned, I am not convinced that any more “rigorous examination” than this is required. The comments made in that work are taken from the case of **R(Noble Organization Ltd) v Thanet District Council** [2005] EWCA Civ 782, in which Auld, LJ at paragraph 68 (the final paragraph), of that judgment made the following comment:

> “I add a note of dissatisfaction at the way the availability of the remedy of judicial review can be exploited – some might say abused – as a commercial weapon by rival potential developers to frustrate and delay their competitors' approved developments, rather than for any demonstrated concern about potential environmental or other planning harm.”

[43] To my mind, those comments were made as an expression of the judge’s indignation at the peculiar facts and circumstances that obtained in that particular case.

[44] Suffice it to say that no such circumstances exist here; and it has not been contended or suggested otherwise.

The Amendment of the By-laws

[45] It is the applicant’s contention that the by-laws were not amended in accordance with section 9 (2) (a) of the Act. This provision required (prior to 2009) that the by-laws in the First Schedule could only have been amended by unanimous resolution. With the amendment to the Act in 2009, the requirement was changed to 75% of the proprietors.

[46] In an effort to meet this submission, Ms. Harrison drew the court’s attention to clause 8 of that part of the First Schedule dealing with general meetings (replicated in the particular by-laws for PSP 440), to the effect that:

> “…accidental omission to give such notice to any proprietor or to any registered first mortgagee or non-receipt of such notice by any proprietor shall not invalidate any proceedings at any such meeting.”

Discussion

[47] How are these two provisions to be reconciled against the background of this case? Are they not, on the face of them, incongruous? Read together, do they mean, on one view, that if notices are sent out to, say, only 40% of the proprietors, an amendment would be regarded as validly having been made? Or, on another view, do they mean, that the fact that there was an omission to give a notice will be of no significance so long as, say, 75% of the proprietors vote?

[48] Again, as I understand it, a matter of this nature is not one that I am called upon to resolve at this stage. However, it appears to have been a point raised by the applicant before the SAT (see ground 2 of the Notice of Appeal); and I can see no clear indication in the written decision that it was directly or indirectly addressed. In those circumstances, is it not arguable that the SAT did not take into account this matter that could have affected the outcome of the case in its favour? In other words, that the tribunal failed to consider a relevant matter? It appears to me that it is an arguable matter with a realistic prospect of success.

Conclusion

[49] From a careful consideration of the issues in this case, it appears to me that this court ought to (and in fact will) grant leave to this applicant to apply for judicial review. Of course, given the particular role of the court at the leave stage, this does not mean that the applicant will necessarily be successful in its application for judicial review. Neither does it mean that it will fail. All it means is that, from the material presented to me, it has convinced me that it has arguable grounds with a realistic prospect of success. Additionally, from the facts presented, this court is not in a position to regard this applicant as being among the ranks of "…busybodies with misguided or trivial complaints of administrative error…" (the words used by Lord Diplock in **Inland Revenue Commissioners v National Federation of Self-Employed & Small Business Limited** (previously cited). There are no discretionary bars to the grant of the application; and the defendants' submissions "do not include what amounts … to a

knockout blow". (see **R (Mencap) v Parliamentary & Health Service Ombudsman [2010] EWCA Civ 875** at [15]).

[50] Also, although not a primary determining factor, it might also be useful to have a definitive judicial pronouncement on the issues that have arisen in this case, which might be used as a guide should similar issues arise in relation to other strata lot proprietors and their strata corporations.

[51] The applicant will therefore be granted leave to apply for judicial review by the making of the following orders:

a. The Applicant is granted leave to apply for the following orders of certiorari:

"i. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that Proprietor Strata Plan 440 (also hereinafter referred to as "PSP 440") was not supplying or distributing water on or within the premises of PSP 440 to the proprietors and or occupants of PSP 440, contrary to the National Water Commission Act and the Office of Utilities Regulation Act.

ii. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that it was within the power of PSP 440 to amend its By-laws, without informing all the registered proprietors of the strata lots of the Extraordinary General Meeting of PSP 440 purportedly held, at which time the By-laws were amended, such instrument of amendment dated 9th November 2011 being lodged at the National Land Agency (Office of Titles).

iii. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that it was within the power of PSP 440 to amend its By-laws to raise money to offset the increase of the imposition of usage and sewerage charges by the NWC and that PSP 440 could "levy" these charges against the proprietors in

accordance with section 5(2) (b) of the Act.

iv. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that the payment of water rates to the NWC was an obligation imposed on PSP 440, for which PSP 440 is empowered to levy a charge on each proprietor of each strata lot in proportion to their unit entitlement.

v. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that the Commission of Strata Corporation had correctly and validly issued a Certificate Pursuant to Exercise of Powers of Sale in respect of Strata Lot numbered 9 to Proprietor Strata Plan 440 registered at Volume 1229 Folio 675 of the Register Book of Titles in the name of Maco Management Inc."

b. Fixed Date Claim Form to be filed and served within fourteen (14) days from the date hereof.

c. There will be a stay of the proceedings in relation to the certificate pursuant to exercise of power of sale of the relevant unit, that is, strata lot #9, registered at volume 1229, folio 675 of the Register Book of Titles, pending the hearing of the substantive matter.

d. No order as to costs.