

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.R. 187 OF 1987

BETWEEN	RODEO HOLDINGS LIMITED	PLAINTIFF
A N D	THE PROPRIETORS STRATA PLAN 88	FIRST DEFENDANT
A N D	NEGRIL BEACH CLUB LIMITED	SECOND DEFENDANT

Mr. D. Muirhead, Q.C. and Mr. Warrington Williams, instructed by Mr. Donald Gittens of Livingston, Alexander and Levy for plaintiff/applicant.

Miss Hilary Phillips and Mrs. Denise Kitson, instructed by Messrs. Perkins, Tomlinson, Grant, Stewart and Co. for first defendant.

Mr. Carl Rattray, Q.C. and Mr. Andrew Rattray, instructed by Messrs. Rattray, Patterson, Rattray, for second defendant.

HEARD: 5th, 6th, 7th and 8th December, 1988.

PANTON, J.

The statement of claim indicates that the plaintiff is the registered proprietor of Apt. C36/37, Negril Beach Club, and a member of the first defendant which was established under Section 4 of the Registration (Strata Titles) Act, consequent on the registration of Strata Plan No. 88.

The second defendant is the registered proprietor of the 76 Strata lots comprising Strata Plan No. 88 and the holder of separate titles in respect of each lot.

The plaintiff, in its statement of claim, is alleging among other things ---

1. misappropriation of funds by the second defendant;
2. improper accounting procedures by both defendants;
3. illegal construction of 12 apartments by the second defendant; and
4. inequitable apportionment of maintenance charges.

The plaintiff is seeking several forms of relief. They are contained in the request for twelve orders, four declarations, damages, costs and interest.

Defences have been filed by both defendants. Issue has been joined in every material area and, indeed, the second defendant is accusing the plaintiff of being an intermeddler.

On March 7, 1988, Edwards, J. made an order for a speedy trial of the cause. Notwithstanding that order, the plaintiff has pursued before me a summons filed on December 14, 1987, which seeks four of the orders that form the basis of the writ filed on September 30, 1987.

Indeed, the four orders on the summons are the first four orders sought in the statement of claim. They are as follows:-

- "1. For an Order pursuant to Section 13 of The Registration (Strata Titles) Act for the appointment of an Administrator by the Court for The Proprietors, Strata Plan No 88.
2. For an Order that the Executive Committee of The Proprietors, Strata Plan No 88 - the First Defendant - deliver to the Administrator appointed by the Court all records, books of account and records of The Proprietors, Strata Plan No 88.
3. For an Order that the Administrator determine the increased obligation of Negril Beach Club Limited - the Second defendant - the owner of the twelve apartments on the ground floor of Block E occasioned by the use thereof as non-residential units - to wit - used for commercial purposes, namely, a restaurant and bar and snack bar and to levy the additional contributions and collect same for the period of such user
  - a. from 1977 - the date of the registration of the Strata Plan - up to the date of the termination of the lease-back arrangements which ended in November 1983;
  - b. from November 1983 - the end of the lease-back arrangements - to such date in or about 1984 or 1985 when the said commercial user ceased and the apartments reverted to residential user and to distribute such sum, if any, among the other owners of The Proprietors, Strata Plan No 88 in accordance with their unit entitlements.
4. For an Order that the Administrator examine the books of accounts including bank accounts and Revenue Reserve Fund and records of The Proprietors, Strata Plan No 88 - the First Defendant - for the period 1977 to 1984 or to such date when the accounts were separated whichever is the later which included or incorporated

the accounts and records of Negril Beach Club Limited - the Second Defendant - and to separate and/or identify the accounts of The Proprietors, Strata Plan No 88 - the First Defendant - and fix all costs and charges and interest applicable to each and collect same."

On November 30, 1988, the first defendant filed a notice of preliminary issue and at the hearing before me on December 5, submissions were made in keeping with that notice that -

1. the Court "has no jurisdiction to grant the relief claimed by the summons on an interlocutory application"; and
2. "the relief claimed by the summons is substantially the main relief claimed in the cause herein and so ought not (to) be obtained on an interlocutory application."

In view of the fact that I had not had the opportunity of reading the file prior to the hearing, I deferred my ruling on the preliminary issue while I continued the proceedings by hearing submissions on the summons itself.

Miss Phillips submitted that the Court had no power to appoint an administrator in interlocutory proceedings, and that the procedure by summons was incorrect as the Act, the rules made thereunder, and the Civil Procedure Code made no provisions for that procedure. The proper course, she said, was by writ.

Mr. Carl Rattray submitted that seeing that fraud was being alleged, the procedure was by writ.

Due to the decision I have arrived at in relation to the second point in the preliminary issue, listed above, it is not necessary for me to rule on the correctness of the procedure.

Miss Phillips submitted that the plaintiff was merely seeking to get the main relief in its statement of claim by means of an interlocutory application. The granting of the application would, she said, "pre-empt the trial". Further, she said, there was no evidence of urgency requiring the appointment before the determination of the case. There are, she said, substantial issues to be tried and viva voce evidence would be necessary as credibility is involved.

She referred to and relied on the case Dodd v. Amalgamated Marine Workers' Union (Law Journal Reports, 1924, the Chancery Division, Volume 93, page 65). In that case, on an interlocutory motion, Astbury, J. made an order allowing the plaintiff to inspect the books and accounts of his union. This was the "sole substantial relief" claimed in the action. On appeal, it held that the order was not a proper relief on an interlocutory application as the inspection of the books was substantially the whole claim, so it would be discharged. For all substantial purposes, the order was the judgment in the action so it could not stand.

Mr. Muirhead has tried to show that in the instant situation the appointment of the administrator is not the main or substantial relief that is being sought. He submitted that for the Dodd case to apply, the defendants would have to show that the appointment of the administrator was substantially the "whole" relief sought.

Mr. Carl Rattray submitted that it didn't matter what words were used if the meaning was that substantially the relief would have been granted.

Having examined the statement of claim, the summons and the various affidavits, I have formed the opinion that the appointment of an administrator is a major and substantial portion of the reliefs sought under the writ. The fact that there are other orders sought does not detract from the clear situation that the appointment of an administrator is a major feature of the proceedings. I hold that the principle in the Dodd case applies to the instant matter as the appointment of an administrator under the summons would result in the removal of that area from the trial of the action. This, in my view, would be wrong. The situation is not dissimilar in this respect to Miller and Parkes v. Cruickshank (Supreme Court Civil Appeal 19/86) in which the learned President of the Court of Appeal referred to Cayne and Another v. Global Natural Resources (1984) 1 A.E.R. 225. In the former case, an injunction was granted lifting the restriction on a student from playing for his school, pending the trial. The learned president in his judgment said:

"Nothing of practical value would be left in the action and if the respondent elected to go to trial it would be of the merest academic interest to him, he having already reaped all the benefits he could ever obtain from the action".

5.

The appeal was allowed.

I would therefore dismiss the summons on the ground that the appointment of an administrator is a major and substantial part of the relief sought in the action, and to appoint one now would defeat the purpose of the action in this respect.

However, if I am wrong, I should say that in any event no good reason has been shown at this stage on the material available why an administrator should be appointed now. At this interlocutory stage, for an administrator to be appointed, I should expect that some compelling reason, some urgency would have been urged on the Court. That has not been forthcoming. On that basis, I would also dismiss the summons.

The order is that the summons is dismissed with costs to the defendants to be agreed or taxed. Certificate of counsel granted.