

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Division

Suit No: CV 662 of 2008

BETWEEN:

PROPRIETORS UNIT PLAN NUMBER 25	1 st PLAINTIFF
PROPRIETORS UNIT PLAN NUMBER 29	2 nd PLAINTIFF
ETERNITY HOLDING LIMITED	3 rd PLAINTIFF
HIEROGLYPHICS INVESTMENTS	4 th PLAINTIFF
AND	
PARAVON INVESTMENTS INC	1 st DEFENDANT
WEST COAST CONSTRUCTION LTD	2 nd DEFENDANT

Before The Honourable Madam Justice Maureen Crane-Scott, Q.C. Judge of the High Court

(In Chambers)

2009: October 30

Mr. Dale Marshall, Q.C. and Mrs. Tammy Bryan in association with Mr. Gregory Nicholls for the Applicant/First Defendant

Mr. Leslie Haynes Q.C. in association with Mr. Damian Edghill and

Ms. Laura Duncan for the 1st and 2nd /Respondents/Plaintiffs

DECISION (No.1)

- [1] ***Nature of the applications:*** On June 3, 2008 the First Defendant applied by way of two separate Summonses seeking the following interlocutory relief:
- (i) ***Re: the primary application:*** an order pursuant to **O. 18 r. 19(1)(a) R.S.C.** and under the inherent jurisdiction of the Court striking out the cause of action of the First and Second Plaintiffs on the ground that it discloses no reasonable cause of action against the First Defendant; or alternatively, an order pursuant to **O. 15 r. 6(2)** requiring that the First and Second Plaintiffs cease to be parties to the action; and
 - (ii) ***Re: the secondary application:*** an order requiring the Plaintiffs to serve on the First Defendant the further and better particulars of the Statement of Claim set out in the Summons filed on June 3, 2008.
- [2] In accordance with Rules of Court and the usual practice in such matters, each application was supported by its respective affidavit sworn to by Michael Smith Alleyne, a director of the First Defendant, laying the foundation for the interlocutory relief sought.
- [3] At the hearing, Counsel for the respective parties produced written submissions and numerous legal authorities for and against the relief sought.
- [4] ***The Submissions:*** The Court has found it convenient to summarize the respective arguments for and against the interlocutory relief sought by the First Defendant, under three (3) italicized sub-headings as follows:
- [5] *i) The first limb of the primary application:* Counsel for the First Defendant, Mr. Dale Marshall, Q.C. dealt firstly with the first limb of his primary application to strike out the pleadings of the First and Second Plaintiffs under **O. 18 r. 19(1)(a)** and under the inherent jurisdiction of the Court on the ground that they disclosed no reasonable cause of action, He referred to **O. 18 r.19(1)(a)** which provides in effect that a party's pleading must disclose to the other parties to the action the case that that other party must meet, failing which it may, *inter alia*, be ordered struck out.
- [6] Referring also to **O. 18 r.12 (1) RSC**, Mr. Marshall submitted that every pleading must contain the necessary particulars of any claim, defence or other matter pleaded.
- [7] He submitted further that where no cause of action or no reasonable cause of action is disclosed, the Court has the power to strike out the pleading. In support of his submission, he cited the following extract from the text, ***Pleadings: Principles and Practice*** by Sir Jack Jacob and Goldrein 1990 at page 48:

"Each party must plead all the material facts on which he relies for his claim or defence, as the case may be. In other words, he must plead all the facts which he must prove to establish a legally complete or viable cause of action or ground of defence, and no averment must be omitted which is essential to success...In **Philipps v. Philipps (1878) 4 QBD 127** at 133, **Cotton LJ** said:

"The statement of claim, of necessity must set out all the facts material to prevent the defendant being taken by surprise, because it is the first pleading, and that which ought to be referred to for the purpose of seeing whether there is a cause of action...In my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."

- [8] As to what is meant by the expression a "reasonable cause of action" as used in **O. 18 r.19(1)(a) RSC**, Counsel for the First Defendant referred to the learning in the **1993 Annual Practice, Volume I, para. 18/197** where the expression "reasonable cause of action" in the corresponding English Rules was said to mean 'a cause of action with some chance of success when only the allegations in the pleadings are considered'.
- [9] Mr. Marshall Q.C. further contended that insofar as it relates to the First and Second Plaintiffs, the Statement of Claim which had been filed in the action had not met the requirements for pleadings set out in the dictum of **Cotton LJ**, in the **Philipps Case** (cited above).
- [10] Counsel for the First Defendant then embarked on a detailed examination of the Statement of Claim and submitted that the only specific references in the Statement of Claim to the First and Second Plaintiffs were to be found at paragraphs 1, 2, 14 and 17 as well as in the prayer for relief.
- [11] Mr. Marshall submitted that the Statement of Claim did not disclose facts such as would amount to a "legally complete or viable cause of action". He contended that there was no statement of how the First and Second Plaintiffs came to acquire the alleged rights to the easements, whether by grant or by operation of law. There was also, he contended, nothing in the pleadings that connects them in any way to the easements claimed or which even alleged their entitlement to the alleged easements or licences. Nor was there any statement of title to any part of the dominant tenement. There were, he complained, absolutely no particulars of the case that the First Defendant had to meet in relation to the First and Second Plaintiffs.
- [12] Turning to paragraph 5 of the prayer for relief in the Statement of Claim, Counsel for the First Defendant further submitted that the First Plaintiff was seeking a declaration that it had acquired its title to the adjoining lands and property on which the central facilities are situated, pursuant to the "all estates clause" found at section 66 of the **Property Act, Cap 236**.
- [13] Mr. Marshall Q.C. submitted that by virtue of section 66 of the **Property Act**, the "all estates clause operates to pass in a conveyance of land *inter alia* all easements, ways, rights and benefits appertaining to the land being conveyed, without the need to expressly provide for them to pass in the conveyance. He submitted that neither the First nor Second Plaintiff had pleaded the existence of any conveyance in relation to any lands at Glitter Bay. This, he said, was incontestably bad. He argued that as the pleadings did not disclose any legally complete or viable cause of action against the First Defendant, they must be struck out.
- [14] For his part, while conceding that the Statement of Claim did not disclose a cause of action by the First and Second Defendants, Counsel for the First and Second Plaintiffs, Mr. Leslie Haynes, Q.C. submitted as the relief sought was declaratory, there was no necessity for a cause of action to be disclosed.
- [15] Referring to the prayer for relief in the composite Statement of Claim filed on behalf of all four Plaintiffs, he indicated that the objection raised by Counsel for the First Defendant could be addressed by an amendment to the prayer for relief to clarify that the declarations sought were not sought by the First and Second Plaintiffs.
- [16] He contended further that provided that a plaintiff could show what he termed "a real interest" in the subject matter of the action, declaratory relief could still be granted even though the plaintiff could not establish a legal cause of action.
- [17] He based his submission on **Order 15 r.16** of the Rules of the Supreme Court, which provides:
- "No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of rights whether or not any consequential relief is or could be claimed."
- [18] Mr. Haynes Q.C. submitted that while the First and Second Plaintiffs were not claiming to be the owners of the property in question, they nonetheless had "a real interest" in the subject matter of the dispute since by virtue of the Condominium Declarations filed pursuant to the **Condominium Act, Cap. 224A** they are under a statutory duty to operate the common facilities and to impose a levy on the unit owners of Blocks A and B Glitter Bay respectively.
- [19] Referring specifically to section 14 of the **Condominium Act**, Mr. Haynes, Q.C. argued that the First and Second Plaintiffs have "a real interest" in the subject matter of the dispute inasmuch as they are under a statutory duty, *inter alia*, to operate the property (including any easements or licences to which the unit owners were declared to be entitled) for the benefit of all unit owners and further had power to (a) establish funds to cover the administrative expenses for the operation of the property and (b) to determine from time to time the amounts of money to be raised for the discharge of the obligations of the body corporate and (c) to raise the amounts so determined by levying on the owners of the condominium units contributions on the unit proprietors in proportion to the unit entitlement of their respective units.
- [20] Insofar as the First and Second Plaintiffs had, as required by the Act, been levying on the unit owners, contributions for administrative expenses (which contributions included amounts payable to the owners of adjoining lands for the use of the easements and licences in dispute) they had, he submitted, "a real interest" in the subject matter of the dispute and in the outcome of the substantive action even though they themselves could not establish a cause of action against the First Defendant.
- [21] Mr. Haynes Q.C. relied for support on the following legal authorities, namely: **Guaranty Trust Co. of New York v. Hannay & Co [1915] 2 KB 536**; **Gouriet v. HM Attorney General [1978] AC 435**; **Greenwich Healthcare National Health Service Trust v. London and Quadrant Housing Trust et al. [1998] Ch.D. 437**; **In re F. (Mental Patient: Sterilisation)[1990] 2 AC 1**; **Metzger et al v. Department of Health & Social Security [1971] 3 All ER 444**; and **In re S. (Hospital Patient: Court's Jurisdiction) [1995] 3 W.L.R. 78**.
- [22] Counsel for the Plaintiffs submitted further that in granting the interim injunctions prior to the commencement of the action, **Alleyne J. (ag)** had heard prolonged and serious arguments as to the nature of the issues to be tried at the substantive action. He accordingly, urged the Court to refuse the First Defendant's application to strike out the cause of action insofar as it relates to the First and Second Plaintiffs.
- [23] In rebuttal, Counsel for the First Defendant sought to distinguish the cases cited by Counsel for the First and Second Plaintiffs on the basis that they turned on their own facts and were not of general application. The cases cited, he said were very narrow in effect and only applicable in exceptional circumstances. He submitted that there was nothing exceptional about the circumstances of the present case.
- [24] He reiterated his earlier submission in relation to the purpose of pleadings and insisted that even if **O. 15 r. 16** applied as Counsel for the Plaintiffs suggested, it did not relieve a plaintiff from the overall obligation to produce pleadings of such a quality as would enable a defendant to know precisely what case it had to meet against each plaintiff in the action.

- [25] Finally, he urged the Court to strike out the cause of action insofar as it relates to the First and Second Plaintiffs on the basis that no cause of action against the First Defendant had been disclosed *vis-à-vis* the First and Second Plaintiffs.
- [26] *ii) The second/alternative limb of the primary application:* Turning to the second or alternative limb of his challenge under the primary application, Counsel for the First Defendant, Mr. Dale Marshall, Q.C. submitted that the First and Second Plaintiffs were not proper or necessary parties to the action. He urged the Court to exercise its discretion under **O. 15 r. 6(2) RSC** to order that the First and Second Plaintiffs cease to be parties to the action.
- [27] Mr. Marshall, Q.C. referred to the text, ***Pleadings: Principles and Practice by Sir Jack Jacob and Goldrein 1990 at page 242*** and submitted that to ensure that all matters in dispute are effectively and completely determined and adjudicated upon, the overriding principle which governs parties to an action is that all necessary and proper parties, *but no others* should be before the Court.
- [28] With respect to the Plaintiffs' claim to the acquisition of rights and easements as set out in the Statement of Claim, Mr. Marshall, Q.C. submitted that the rights and easements of way over the central facilities in respect of which the Plaintiffs had sought declarations were appurtenant to land. It was essential, he said, that the person claiming the right or easement must be the owner of a dominant tenement. Since the First and Second Plaintiffs held no conveyance and own no estate or interest in any unit or common property in the Glitter Bay Condominiums, they had, he contended, no *locus standi* in an action asserting such rights and were therefore neither proper nor necessary parties to the action and should be struck out.
- [29] Turning next to the Plaintiffs' claim to have acquired a licence to use the central facilities by way of express and/or implied and/or statutory grant and/or by way of prescription, Mr. Marshall submitted that the Statement of Claim had failed to lay any foundation for a claim by the First and Second Plaintiffs to the alleged licences.
- [30] He submitted that the proper parties to the action were the Third and Fourth Plaintiffs who held conveyances and were the owners of condominium units and interests in the common property. He contended, however, that as the First and Second Plaintiffs owned no estate in land, they were not entitled to the benefit of the easements or licences claimed and ought to be struck out as parties to the action.
- [31] In support, Mr. Marshall, Q.C. referred the Court to the following legal authorities: ***Halsbury's Laws of England, 4th Edition, Volume 14, paras. 1-9, Nature and Characteristics of Easements; Halsbury's Laws of England, 4th Edition, Volume 14, para. 167 Action for Disturbance of Right of Way; The Modern Law of Real Property, 10th Edition, G.C. Cheshire pp. 468-475; Commonwealth Caribbean Land law, Sampson Owusu, Routeledge-Cavendish, @ p. 376- A dominant and a servient tenement; Milner's Safe Company Limited v. Great Northern and City Railway Company [1907] 1 Ch. 208.***
- [32] Counsel for the First Defendant submitted that as the interim injunction had been applied for by the First and Second Plaintiffs and not by the Third and Fourth Plaintiffs, the interim injunction granted by ***Alleyne J. (ag)*** would fall if the First and Second Defendants were removed from the action as parties. To avoid this, Mr. Marshall, Q.C. invited the Court, if it was so minded, to extend the injunction instead to the Third and Fourth Plaintiffs who in his view were the proper parties to the action.
- [33] In response, Counsel for the Plaintiffs, Mr. Haynes, Q.C., repeated his earlier arguments justifying the joinder of the First and Second Plaintiffs in the action and submitted that while themselves having no cause of action, the First and Second Plaintiffs nevertheless had "a real interest" in the subject matter of the dispute and in the declaratory relief claimed in the suit.
- [34] It was the duty he said, of the First and Second Plaintiffs, as the respective bodies corporate of "Block A" and "B" of the Condominiums at Glitter Bay, to operate the property and to levy on the several unit proprietors contributions towards their share in the administrative expenses of operating the property.
- [35] Mr. Haynes, Q.C. also contended that the First and Second Plaintiffs were necessary parties to the suit because if legal costs were ultimately awarded against the Plaintiffs, the First and Second Plaintiffs would be in a position to call upon or impose a levy on the Third and Fourth Plaintiffs and other unit proprietors to meet their share of any legal costs due to the Defendants.
- [36] In rebuttal, Counsel for the First Defendant, Mr. Marshall repeated his earlier challenge to the pleadings which had been filed in the action and to the lack of specificity in the Statement of Claim regarding exactly what case the First Defendant had to meet *vis-à-vis* the First and Second Plaintiffs. He drew the Court's attention to a specimen pleading for a claim for a declaration as to a right of way found in ***Bullen & Leake & Jacob's Precedents of Pleadings, 13th Edition, p. 311-313.*** The specimen, he contended, was the type of pleading required, and expected, where a plaintiff was seeking a declaration of right. According to Mr. Marshall, unless the composite Statement of Claim were properly drawn showing what each Plaintiff was claiming, the First Defendant would be embarrassed and unable to plead as it would not know the case which it had to meet against each of the four Plaintiffs.
- [37] He urged the Court to examine the Statement of Claim and ascertain exactly what rights the First and Second Plaintiffs were claiming *vis-à-vis* the First Defendant.
- [38] Turning to Mr. Haynes' submission that the First and Second Plaintiffs were necessary and proper parties so that any costs associated with an action on behalf of the condominium owners could be levied on the unit owners, Mr. Marshall argued that nothing in the pleadings had alleged that the First and Second Plaintiffs were parties to the action in a representative capacity or were representing anyone. Furthermore, he contended, section 14 of the ***Condominium Act*** was very narrow in its scope and did not give the First and Second Plaintiffs as bodies corporate, the right to prosecute or join in litigation for or on behalf of the individual unit owners.
- [39] *iii) The secondary application for Further and Better Particulars:* Following submissions on the primary application, Counsel for the First Defendant then turned his attention to his secondary application and to the affidavit of Michael Smith Alleyne filed on June 3, 2008 seeking further and better particulars of the Plaintiffs' Statement of Claim.
- [40] Mr. Marshall, Q.C. drew attention to the fact that the First Defendant had on May 30, 2008, through its attorneys-at-law, requested the required particulars of the Plaintiffs' Statement of Claim and that these had not been furnished by the Plaintiffs' attorney-at-law. Instead of providing the requested particulars, he complained, the Plaintiffs' attorney-at-law had by letter dated June 2, 2008 threatened to apply for Judgment in Default unless the First Defendant filed its Defence within the time prescribed by Rules of Court.
- [41] Counsel for the First Defendant submitted that due to the absence of the requested particulars, the First Defendant found itself embarrassed in pleading to the Statement of Claim and unable to either admit or deny many of the allegations which the Plaintiffs had made in its Statement of Claim.
- [42] He cited, for example, paragraph 8 of the Statement of Claim which referred without specificity to agreements for sale under which condominium units in the Glitter Bay development were sold. He observed that it appeared from the Statement of Claim that the agreements for sale were entered into "in or about 1980". He contended that inasmuch as the First Defendant was a limited liability company which had only been incorporated in May 12, 2004, it was obviously not in existence when these agreements were entered into. Without the required particulars, he argued, the First Defendant would be obliged to file a Defence and to plead to matters about which it had no knowledge and which pre-dated its very existence.

- [43] Referring further to paragraph 9 of the Statement of Claim, Mr. Marshall, Q.C. observed that the Plaintiffs had made mention of a company, Glitter Bay Limited, being the Vendor in the said Agreements as well as in the conveyances to the original units of the Condominiums. He complained that no particulars had been provided in the Statement of Claim as to the parties to the said agreements and conveyances or the terms under which the units were sold. According to Mr. Marshall, the absence of the required particulars hampered the First Defendant in its ability to fully appreciate the case which it was required to meet and placed the First Defendant at a severe disadvantage in pleading to the matters set out in the Statement of Claim.
- [44] Counsel for the First Defendant raised similar objections in relation to paragraphs 10, 12 and 13 of the Statement of Claim. He contended that the required particulars were necessary to enable the First Defendant to plead to the matters raised and cited the case of *Turquand v. Fearon (1879) 48 L.J.Q.B.703* and extracts from the *1993 Supreme Court Practice 1993 @ paragraphs 18/12/2; 18/12/5; 18/12/27 and 18/12/42* in support of his arguments.
- [45] The First Defendant's application for further and better particulars was resisted by Counsel for the Plaintiffs, Mr. Haynes, Q.C. who argued that it was unnecessary for the Plaintiffs in their Statement of Claim to have pleaded details of and provided particulars of all 46 agreements and conveyances.
- [46] According to Mr. Haynes, the function of pleadings was to inform the other side of the nature of the case it had to meet. It was sufficient, he contended, for the Plaintiffs to have pleaded, as they had done in paragraphs 7, 8 and 9, the existence of the original agreements and conveyances of the condominium units and the fact that they had been entered into by Glitter Bay Limited as vendor and as the then owner of the lands on which the Condominiums had been constructed and as the then owner of the adjoining lands on which the central facilities of the condominiums had been constructed.
- [47] Referring to **O. 24 r. 10**, Mr. Haynes contended that it was open to the First Defendant at any time to serve a notice on the Plaintiffs requiring production for inspection of any documents mentioned in the Statement of Claim. Failing production of the requested documents, then it was open to the First Defendant to apply and obtain a court order for production by the Plaintiffs of the documents in their possession.
- [48] Counsel for the Plaintiffs contended that there was a clear distinction to be drawn between a request for further and better particulars and a request for the production of documents.
- [49] In rebuttal, Counsel for the First Defendant submitted that every agreement for sale is negotiated with a purchaser on its own terms and unless particulars of the agreements were given prior to the filing of the Defence, the First Defendant would be left embarrassed and with no alternative but to make a bald denial of the facts asserted.
- [50] The decision of the Court in relation to the various applications was reserved following the legal arguments.
- [51] **Exercise of the Court's Discretion:** Having considered the primary and secondary applications and examined the arguments of Counsel for the respective parties together with the legal authorities cited; and having also examined the background to the substantive action, the *ex parte* interim injunctions granted by **Alleyne J. (ag)** and the Plaintiffs' Writ of Summons and Statement of Claim herein, the Court has reached its decision on the First Defendant's applications for the reasons which hereinafter appear.
- [52] *i) The first limb of the primary application:* The application to strike out the Writ of Summons filed on the 21st April, 2008 and the Statement of Claim filed on 21st May, 2008 in respect of the First and Second Plaintiffs under **O. 18 r. 19(1)(a)** and under the inherent jurisdiction of the Court on the ground that they disclose no reasonable cause of action against the First Defendant is refused for the following reasons:
- i) the Court is keenly aware and has borne in mind that on April 13, 2008, prior to the filing of the Writ of Summons herein, the Intended First and Second Plaintiffs appeared before **Alleyne J. (ag)** on a Certificate of Urgency and obtained *ex parte* interim injunctions restraining the Defendants their servants and/or agents or otherwise howsoever:
 1. "from entering upon the lands and property in respect of the Condominiums situate at Glitter Bay in the parish of Saint James in Barbados, such Condominiums having been established under Condominium Declarations filed on the 12th May, 1983 and on the 31st day of March, 1982 respectively by Glitter Bay Limited (as Vendor therein) of the One Part Barclays Bank International Limited (as Mortgagee therein) of the Second part and Roderick G. Norris and his wife Barbara J. Norris (as Purchasers therein) of the Third Part until further order of the Court;
 2. from obstructing and/or impeding in any manner whatsoever any rights and/or easements of way or access as shown and delimited in the said Condominium Declarations and/or the Conveyance dated the 21st day of May, 1983 made between Glitter Bay Limited (as Vendor therein) of the One Part Barclays Bank International Limited (as Mortgagee therein) of the Second part and Roderick G. Norris and his wife Barbara J. Norris (as Purchasers therein) of the Third Part until further order of the Court; and
 3. from carrying out any construction and/or demolition works and/or alterations of any kind on the property known as the "Central Facilities" situate to the south of buildings in respect of Block A and B of the said Condominiums, and comprising, *inter alia*, the following:
 - (a) The swimming pool and its ancillary buildings, structures and amenities;
 - (b) The tennis courts and their ancillary buildings, structures and amenities;
 - (c) The bar and restaurant area and its ancillary buildings, structures and amenities;
 - (d) The concierge and communal toilet facilities and their ancillary buildings, structures and amenities;
- which said property known as the "Central Facilities" is shown and delineated on the sketch plan annexed to the Order and shaded yellow."
- ii) Although the Plaintiffs' draft Statement of Claim was not placed before **Alleyne J. (ag)** when the *ex parte* interim injunctions were issued, the Court is satisfied that the affidavit-in-support of Roderick Norris and the documents exhibited therewith would have established to the satisfaction of **Alleyne J. (ag)** who granted the injunctions, the serious questions which are to be tried at the substantive hearing of the action.
 - iii) Paragraph 5 of the interim order of **Alleyne J. (ag)** contained the usual stipulation to the effect that both Defendants were to be at liberty to apply to the Court to discharge the order or any part thereof upon giving the Counsel for the Plaintiffs, not less than 36 hours' prior notice.
 - iv) Neither Defendant has applied to vary or discharge the interim order of **Alleyne J. (ag)** and there has to date been no *inter*

partes review of the *ex parte* interim injunctions granted by **Alleyne J. (ag)** in April, 2008.

v) In the absence of a full *inter partes* review of the interim injunctions which remain in full force and effect pending further order of the Court, this Court is not inclined, within the parameters of *this* application, to accept Mr. Marshall's invitation to vary the order of **Alleyne J. (ag)** by granting the injunctions to the Third and Fourth Plaintiffs in substitution for the First and Second Plaintiffs.

vi) Quite apart from the foregoing considerations, although the First and Second Plaintiffs are unable to establish a cause of action *vis-à-vis* the First Defendant independently of that advanced by the Third and Fourth Plaintiffs, they have nonetheless established to the satisfaction of this Court that they have "a real interest" in the declaratory relief claimed by the Third and Fourth Plaintiffs sufficient to justify their continued joinder in the action as parties.

vii) In this regard, the Court has accepted that while the rights to the easements and/or licences over the adjoining lands forming part of the central facilities, being appurtenant to land, could not properly be claimed by the First and Second Plaintiffs who, very obviously, cannot establish a cause of action therefor, the First and Second Plaintiffs as bodies corporate governed by the **Condominium Act**, are under a statutory duty to manage the central facilities which have been established on or over adjoining lands.

viii) The First and Second Plaintiffs are consequently parties who are "interested in the subject matter of the declarations" claimed in the suit and need not necessarily show a cause of action to justify their joinder in the action. **Guaranty Trust Co. of New York v. Hannay & Co [1915] 2 KB 536.**

ix) In the circumstances, the First Defendant's application to strike out the pleadings *vis-à-vis* the First and Second Plaintiffs on the ground that the pleadings disclose no reasonable cause of action against the First Defendant is refused.

[53] While the First Defendant's application to strike out the First and Second Plaintiffs' pleadings has been refused, the Court nevertheless agrees with Counsel for the First Defendant that the composite Statement of Claim which has been filed herein on behalf of all four plaintiffs is drafted somewhat unhappily and, from the point of view of the law of pleadings, leaves much to be desired.

[54] As Counsel for the First Defendant has correctly pointed out, apart from the general prayer for relief by all four Plaintiffs, the only paragraphs of the Statement of Claim which make specific reference to the First and Second Plaintiffs are paragraphs 1, 2, 14, 17.

[55] While these paragraphs obviously disclose no independent cause of action against the First Defendant, they have not, in the Court's view sufficiently identified the "real interest" which the First and Second Plaintiffs have in the action and in the relief sought. Indeed, it was only during the course of the arguments at the hearing of the application that it became clear why the First and Second Plaintiffs had been joined in the action at all.

[56] The Court, however, accepts the submissions of Counsel for the Plaintiffs that inasmuch as the First and Second Plaintiffs have a statutory duty to manage the central facilities of the Glitter Bay Condominiums and to levy contributions on the various unit owners (including amounts payable to the owners of adjoining lands for the use of the easements and licences in dispute) they do have "a real interest" in the outcome of the proceedings and in the declarations sought to the extent that parts of the central facilities depend upon the validity of the claim by the Third and Fourth Plaintiffs (and others) to have acquired easements and/or licences over adjoining lands.

[57] In the view of the Court, paragraphs 11, 12, 13 and 14 of the Statement of Claim do not satisfactorily establish how or when the First and Second Plaintiffs became active in the management of the central facilities. Nor have any facts been pleaded which would substantiate the role which the First and Second Plaintiffs have allegedly played over the years in the operation and upkeep of the central facilities. More importantly, no particulars are given as to when the levying of contributions from the various unit owners payable to the owner of the adjoining lands for the use and enjoyment of the alleged easements and/or licences was actually commenced. In the light of these deficiencies, it is accepted that the First Defendant would be under an obvious disadvantage as to how to plead in relation to the First and Second Plaintiffs.

[58] In accordance with its powers under **O. 18 r. 19(1)**, the Court hereby orders that the Plaintiffs amend the composite Statement of Claim to more clearly indicate the interest which the First and Second Plaintiffs have in the declaratory relief sought and to more clearly identify the statutory basis from which the interest of the First and Second Plaintiffs in the proceedings is derived.

[59] Having read the Statement of Claim and heard the arguments of Counsel for the Plaintiffs regarding the nature of the Plaintiffs' claim, the Court is of the view that as the Third and Fourth Plaintiffs do not currently purport to represent the interests of the other Condominium unit owners, consideration be given by Counsel for the Plaintiffs to making the necessary application to ensure that one or more of the Plaintiffs are appointed to represent the interests of the other 44 condominium unit owners all of whom would appear to have similar if not identical interests in the relief claimed.

[60] In the event that the Third and Fourth Plaintiffs were to be successful in obtaining the declarations of right claimed in the action, it would seem that the other 44 unit owners would be unable to enforce any judgment against the Defendants unless representative proceedings were instituted on their behalf or they were expressly made parties to the action.

[61] *ii) The alternative limb of the primary application:* As the Court is satisfied that the First and Second Plaintiffs have a "real interest" in the relief claimed, they are necessary and proper parties to the action within the meaning of **O. 15 r.6**. In the circumstances, the second or alternative limb of the First Defendant's application seeking the removal of the First and Second Plaintiffs as parties to the action pursuant to **O. 15 r. 6(2)** is also refused.

[62] *iii) The secondary application for Further and Better Particulars:* The Court is satisfied that Rules of Court require that where pleadings disclose the existence of alleged agreements, the names of parties to the agreements and whether the agreements were made orally or in writing should be pleaded together with the relevant terms relied on. **Turquand v. Fearon (cited above)** Also **1993 Supreme Court Practice 1993 @ paragraphs 18/12/2; 18/12/5.**

[63] As the required particulars were not pleaded nor subsequently provided by the Plaintiffs when the First Defendant applied by letter for their production, the First Defendant was entitled to apply to the Court for an order for their production and an order is hereby granted in terms of the Summons.

[64] **Disposal:** In the result, it is hereby ordered as follows:

- 1) The application to strike out the Writ of Summons filed on the 21st April, 2008 and the Statement of Claim filed on 21st May, 2008 in respect of the First and Second Plaintiffs under **O. 18 r. 19(1)(a)** and under the inherent jurisdiction of the Court on the ground that they disclose no reasonable cause of action against the First Defendant is refused;
- 2) the application to remove the First and Second Plaintiffs as parties to the action pursuant to **O. 15 r. 6(2)** is also refused.
- 3) the Plaintiffs shall within 21 days amend their Statement of Claim to more clearly indicate the interest which the First and Second Plaintiffs claim to have in the declaratory relief sought and to more clearly identify the statutory basis from which the interest of the First and Second Plaintiffs in the proceedings is derived;

- 4) The Plaintiffs do within 7 days of delivery of the amended Statement of Claim, serve on the First Defendant the particulars of the Statement of Claim more particularly identified in the Summons for Further and Better Particulars filed on June 3, 2008;
- 5) The First Defendant shall file and serve its Defence within 14 days from the date of service of the said particulars;
- 6) The costs of both applications are certified fit for 2 attorneys-at-law and are awarded to the First Defendant to be taxed if not agreed.

Maureen Crane-Scott

Judge of the High Court