

IN THE SUPREME COURT OF BELIZE, A.D. 2022

CLAIM No. 576 of 2019

BETWEEN

PROPRIETORS OF STRATA PLAN 10

CLAIMANT

AND

JAMES JANMOHAMED

DEFENDANT

BEFORE The Honourable Madam Justice Patricia Farnese

FINAL HEARING DATE: June 9, 2022

APPEARANCES

Mr. Esteven Perera, for the Claimant

Mr. Andrew Bennett, for the Defendant

DECISION

Introduction

[1] The Proprietors of Strata Plan 10 (the Proprietors) request a judgment for outstanding monthly fees associated with 11 condominium units (Units) owned by Mr. Janmohamed in the development known as the Royal Palm Villas (Villas). In his closing submission, Counsel for Mr. Janmohamed expressly abandoned all of his defence and counterclaim save for a single issue. Mr. Janmohamed argues that the Proprietors should be estopped from receiving a judgment for the outstanding fees because they trespassed on his Units by placing padlocks on the doors and some windows, which prevented him from readying those Units for occupation or sale. He also claims damages for that trespass. The Proprietors admit installing the padlocks on Mr. Janmohamed's Units.

[2] I find that the Proprietors actions were lawful and do not amount to a trespass. In light of this finding, the consideration of the merits of Mr. Janmohamed's defence and counterclaim is unnecessary. Mr. Janmohamed does not dispute that the fees are outstanding or the amount owing. The Proprietors are entitled to judgment for BZ\$512,741.75 plus interest and their costs.

Issues

1. Did the Proprietors trespass on Mr. Janmohamed's property?
2. If trespass is found, are the Proprietors estopped from bringing their claim for outstanding fees?

Analysis

1. Did the Proprietors trespass on Mr. Janmohamed's property?

[3] In *Fairweather v. Penner*, Young J adopted the following definition of trespass, "Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even though no actual damages is done."¹ The key determination in this case is whether the Proprietors' actions were lawful. The Proprietors' actions were lawful if they were authorized by either the *Strata Titles Registration Act (Strata Act)* or the Villas' Bylaws.

[4] By deciding to become owner of a unit within a condominium community, Mr. Janmohamed agreed to reasonable land-use restrictions for the shared benefit of all unit owners. Bylaw 1, Schedule 2 outlines the purpose of those restrictions are:

- (a) to preserve the values of the Properties and the improvements placed therein;
- (b) to preserve and enhance, now and in the future, the attractiveness and desirability of the Properties;
- (c) to maintain common architectural themes and styles.

Specifically relevant to this case, are the requirements in Bylaw 1, Schedule 1 that Mr. Janmohamed:

- (c) repair and maintain his strata lot, and keep it in a state of good repair, reasonable wear and tear, and damaged by fire, storm, tempest or act of God, excepted;
- (e) not use his strata lot or permit it to be used in such a manner or for such purpose as shall cause a nuisance or hazard to the occupier of any other strata lot (whether a proprietor or not) or any member of the household or any guest of such occupier;

¹ Claim No. 398 of 2020 at para 10, citing *Halsbury's Laws of England*, 4th ed. Vol 45, para 1384.

In addition, Bylaw 31, Schedule 2 provides:

Each Owner shall prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on his Strata Lot which tends to substantially decrease the beauty of the neighborhood as a whole or in a specific area.

The evidence establishes that Mr. Janmohamed is in clear breach of these Bylaws. Mr. Janmohamed did not offer any evidence to counter the Proprietors' evidence that he permitted his Units to fall into such disrepair that they were unsightly and had become a nuisance. Photographs taken when the locks were installed show accumulation of garbage within some of his Units. I accept the Proprietors evidence that some of this garbage was left by people who were squatting in some of his Units because the locks were no longer functional. Mr. Janmohamed also did not dispute that no maintenance or construction of those Units had occurred for many years.

[5] The Proprietors are the corporation created under the *Strata Act* who have the responsibility to maintain the Villas common property and to enforce the Bylaws. Bylaw 3(f), Schedule 2 authorizes the Proprietors to:

do all things reasonably necessary for the enforcement of the by-laws and the control, management and administration of the common property.

Mr. Janmohamed acknowledges that the *Strata Act* imposes a duty on the Proprietors to maintain and manage the use of the Villas' common property. He argues, however, that the Bylaws limits the exercise of that duty to common property.

[6] Mr. Janmohamed relies on Bylaw 20, Schedule 2 to assert that the Proprietors trespassed when they placed padlocks on his Units. Bylaw 20 provides:

For the purpose solely of performing the maintenance referred to in this Article, the Executive Committee, through his duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Strata Lot at reasonable hours on any day, except Sunday, and such entry shall not be deemed a trespass. Nothing herein shall preclude immediate access by the Corporation in the case of any fire or other emergency which poses a danger to lives or property.

The application of Bylaw 20, however, is limited to the Article in which it is found. Mr. Janmohamed can be excused for the confusion as the Bylaws are not drafted using numbers to identify the various Articles. Articles are identified with headings. Bylaw 20 falls under the heading "Exterior Maintenance." One would not normally need to access the interior of units to maintain the exterior feature of the property. The exceptional nature of exterior maintenance that

would require access to a unit explains why the Bylaws call for advance notice in non-emergency situations. Exterior maintenance of this kind likely could be planned to accommodate a unit's occupier. To require advance notice for routine maintenance in all circumstances, especially in a condominium development like the Villas where many unit owners may only be resident for part of the year, would be a barrier to the property's efficient upkeep. Bylaw 20 does not apply to the circumstances of this case.

[7] Bylaw 3(f), Schedule 2, therefore, is the measure for whether the Proprietors' conduct was authorized. I find placing the padlocks was reasonably necessary for the enforcement of the Bylaws in the circumstances. I am convinced that the Proprietors acted out of safety concerns arising from unknown persons unlawfully accessing the Units. Other unit owners also had reason to be concerned that the unsightly and potentially unsafe Units would have an impact on their property values. Mr. Janmohamed tendered no evidence in his defence and did not testify.

[8] I accept the Proprietors' evidence that the condition of Mr. Janmohamed's Units was apparent and obvious to everyone residing at the Villas. Mr. Janmohamed resides at the Villas and can be presumed to be aware of the condition yet failed to act for years. I accept the Proprietors' evidence that no work had been undertaken in the Units to ready them for sale and occupation long before the padlocks were installed. Mr. Janmohamed's defence also supports the Proprietors' claim that he long disputed his legal responsibilities for obligations arising from being the Units' owner. I find the Proprietors' held a reasonable belief that Mr. Janmohamed would not assist their efforts to remedy the problems posed by the unsecure Units and acted accordingly to remedy the situation.

[9] Finally, I find no merit in Mr. Janmohamed's claim that by installing padlocks, the Proprietors had effective control of his Units through an illegal act and ought to be estopped from collecting the fees owed. Mr. Janmohamed did not seek the keys for the padlocks for 5 years. I have no reason to doubt the Proprietors' evidence that the keys to the locks would have been given to Mr. Janmohamed upon his request. I suspect the Proprietors would have welcomed any sign that Mr. Janmohamed was taking steps to remedy the problem he created.

IT IS HEREBY ORDERED THAT:

- (1) Mr. Janmohamed pay BZ\$512,741.75 for outstanding fees owed to the Proprietors.
- (2) Mr. Janmohamed pay interest on the judgment amount pursuant to section 166 of the *Supreme Court of Judicature Act*.
- (3) Mr. Janmohamed pay costs of BZ\$7325.00 to the Proprietors.

Dated September 20th, 2022

Patricia Farnese
Justice of the Supreme Court of Belize