



[2020] JMSC Civ 263

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015 HCV03867

BETWEEN	MACO MANAGEMENT INC.	CLAIMANT
		1ST DEFENDANT
AND	THE PROPRIETOR'S STRATA PLAN 440	
AND	THE STRATA APPEALS TRIBUNAL	2ND DEFENDANT

IN OPEN COURT

Mrs. Denise Kitson, K.C. and Ms. Khian Lamey instructed by Grant, Stewart, Phillips & Co., Attorneys-at-law for the Claimant

Mr. Seyon Hason instructed by Seyon T. Hanson & Co., Attorneys-at-law for the 1st Defendant

Ms. Carla Thomas, Ms. D. Powell and Mr. Christopher Henry, Attorneys-at-law for the 2nd Defendant

Heard: October 26 and 27, 2016 and November 27, 2020

Judicial Review – Whether the Claimant filed its appeal to the 2nd Defendant out of time.

GRAHAM-ALLEN, J

The Court apologies to the parties for the delay in delivering this judgment.

The Parties

[1] The Claimant, Maco Management Incorporated was registered on the 12th day of April 2013 as the proprietor of the Strata Lot Numbered Nine of Strata Plan Number Four Hundred and Forty together with Sixty-One Undivided 1/10,000th

shares of the common property therein and all the land comprised in the Certificate of Title registered at Volume 1229 Folio 675 of the Register Book of Titles. The Claimant was the purchaser in possession since November 2006 before he became a registered proprietor.

[2] The First Defendant is The Proprietor; Strata Plan 440 whose duties under the Strata Act are to provide amenities and services to the respective strata proprietors by way of a single charge levied against each strata lot as maintenance fees.

[3] The Second Defendant is the Strata Appeals Tribunal

BACKGROUND

[4] The Claimant, became the registered proprietor, of the Strata Lot numbered 9 on Strata Plan 440 and 61 undivided 1/10,000th shares of the common property on April 12, 2013 and comprised in the Certificate of Titles registered at Volume 1229 Folio 675 of the Register Book of Titles.

[5] Prior to this, Mr. Gordon Brown (the claimant's representative and also a Director of the company) had been the purchaser in possession since on or about November 2006.

[6] PSP 440, in exercise of its duties under the Registration (Strata Titles) Act, provided inter alia, that amenities and services to the respective strata proprietors be payable by way of a single charge levied against each strata lot as maintenance fees.

[7] In July 2010, at a meeting convened with the Strata Proprietors, the proprietors were informed of a new sewerage charge from the National Water

Commission (hereinafter referred to as “the NWC”). A decision was taken at the meeting to contact the NWC to ascertain whether individual meters could be installed to allow each proprietor to pay his own rates to the NWC. An increase in the maintenance sum was imposed in the interim. The Executive Committee of PSP 440 communicated this decision to the proprietor in a memorandum dated September 9, 2020. There was a drastic increase in the NWC bill charged to the Strata.

[8] Mr. Brown, the Claimant’s representative objected to the increase and wrote to the Executive Committee of PSP 440 by letter dated September 20, 2010 indicating that it is impossible to accede to the increase in maintenance charges, given the nature and infrequency of occupancy by the Claimant and its licensees.

[9] At a subsequent Annual General Meeting of PSP 440 on March 5, 2011, a decision was taken that separate meters would not be pursued and water and sewerage charges would remain part of maintenance. However, by vote taken, a decision was made, that the increased cost of maintenance, sewerage and water rates would be charged to all strata proprietors.

[10] By letters dated July 19, 2011 and August 15, 2011, the Executive Committee of PSP 440 wrote to the Claimant’s representative and requested outstanding payment for maintenance fees outlined as follows:

“

1. *Maintenance Fees: JA\$66,238.00*

2. *Insurance Cess: US\$994.00*

3. *Front Wall Cess: JA\$45,810.00*

”

[11] The Claimant’s representative remitted via cheque the outstanding maintenance, insurance payment and the cess imposed for the construction of the front wall and fence. However, there was an objection to the portion of maintenance which represented an increase in the NWC’s charges for sewerage and water.

- [12] Following a series of written correspondences, between the parties regarding the disputed and outstanding sums, including written notices demanding payment of all outstanding sums, PSP 440 applied to the Commission of Strata Corporations (hereinafter “the CSC”) for a Certificate Pursuant to Exercise of Powers of Sale under s.5(c)(4) of the Registration (Strata Titles) Act, in or around January 2013 in respect of strata lot numbered 9.
- [13] The CSC then wrote to the Claimant, advising of the receipt of the application for powers of sale, options for payment if the debt was acknowledged and the right of appeal if the sum was disputed.
- [14] By instrument dated February 19, 2013 and issued on March 11, 2013, the CSC issued its Certificate Pursuant to Exercise of Powers of Sale on the basis that PSP 440 had exhausted all means of obtaining payments owing to the said capital strata lot.
- [15] On July 23, 2013, the Claimant lodged an appeal to the Strata Appeals Tribunal (hereinafter “the SAT”) against the decision of the CSC, on the grounds that:

“

- (1) *Maco is not indebted to the PSP 440 in the sum claimed by PSP 440 in respect of Strata Lot numbered 9.*
- (2) *The amendment of the By Laws of PSP 440 authorising its purported right to force proprietors to pay stated charges for the supply of water and for sewerage and to disconnect for non-payment of the charges is void and in breach of the law.*
- (3) *Maco is not obliged to pay any sums to the Defendant on account of water or sewerage services purportedly supplied to it or its predecessor in title since the date of the passage of the Office of Utilities Regulation Act.*

(4) The charge certificate issued by the Commission of Strata Corporations to PSP 440 in respect of the said strata lot was wrongly issued.

(5) Maco also relies upon facts and grounds set out in the affidavit of Gordon Brown attached to (the) Notice of Appeal. ”

[16] The SAT heard the appeal and decided in favour of PSP 440 as outlined above, for which the claimant seeks judicial review.

THE ISSUES

- [17]** (i) Whether PSP 440 is in breach of the National Water Commission Act and Office of Utilities Regulation Act
- (ii) Whether the CSC's issuance of a certificate for exercise of power of sale of Strata Lot 9 was in contravention of the Registration (Strata Titles) Act
- ii) Whether the Appeal lodged by Maco Inc was within the time limit of the Registration (Strata Titles) Act
- iii) Whether the Decision of Strata Appeals Tribunal's is Irrational and/or Unreasonable

THE EVIDENCE

The Affidavit of Gordon P. Brown

[18] The Claimant by way of the affidavit in support¹ of fixed date claim form, deposed by Mr. Gordon Brown (Director of the company and representative of the claimant), stated he has been the purchaser in possession of the strata lot, numbered 9 since on or about November 2006 and has maintained exclusive

¹ Filed August 4, 2015

possession since then. Mr. Gordon stated, that the Claimant, became the registered proprietors of an estate in fee simple of all that parcel of land being the Strata Lot numbered nine together with sixty-one undivided ten-thousandths of the common property therein of the Strata Plan No. 440 being all that parcel of land registered at Volume 1229 Folios 675, of the Register Book of Titles ("Strata Lot 9") on April 12, 2013. The certified copy of the duplicate certificate of title is marked GPB 6.

- [19]** Mr. Brown stated that the executive committee of the Strata Corporation by a memorandum dated September 9, 2010, informed all strata lot proprietors that there would be a dramatic increase in the operating costs of the corporation due to the implementation by NWC of sewerage charges for services supplied. This memorandum is marked GPB 7. The memorandum made reference to an Extraordinary General Meeting of the Strata Corporation held on Thursday, July 20, 2010 and further outlined that the decision taken by the majority of members present, that each strata proprietor should apply to the NWC for separate supply of water and sewerage services and have a meter assigned to each strata lot instead of the alternative of increasing maintenance fees. The said memorandum stipulated that a cess would be imposed to cover the cost of installation of water pipes to each strata lot, by the Strata Corporation.
- [20]** Mr. Brown stated that he wrote a letter dated September 20, 2010, addressed to Ms. Angela Davis, Property Manager, replying to the executive committee and in which he explained that the monthly maintenance of each proprietor should be reduced by a fair measure, on the basis that proprietors would pay only for the water supplied to the pools and for watering of the lawns and maintenance of the common areas. This letter is marked GPB 8. He further stated that he suggested that a method for the calculation of the reduction of maintenance fees, based on the average cost of the total water bill to the Strata Corporation for a 3-month period immediately prior to the implementation of the sewerage charge and with a fair adjustment for water to the common areas of the strata plan.

[21] He stated that he received a memorandum dated September 22, 2010, marked GPB 9, which was sent by the executive committee, informing all strata lot proprietors that there would be an implementation of a special increase in maintenance fees as an interim measure until individual meters were installed. This was stated in the said memorandum that due to the serious impact of the cost of sewerage on the Corporation's cash flow, Mr. Brown wrote to the executive committee, in response and indicated that it would be impossible to accede to such an increase given the nature and infrequency of occupancy by the claimant and its licensees at Strata Lot 9. It was further requested, that the executive committee provide financial analysis to justify the charges imposed. That letter dated September 30, 2010, is marked GPB 11.

[22] Mr. Brown stated in his affidavit, that at the subsequent Annual General Meeting, held on March 5, 2011, the matter of the increased cost facing the Strata Corporation was considered. A copy of the minutes marked GPB 12, is at page three of the Annual General Meeting's Report: It states,

"After a lengthy discussion re: the pros and cons of this issue it was decided that we keep water as part of Maintenance as the best way forward in the interest of the complex. Ms. Williams suggested that a vote be taken to determine whether the present system is to be kept. The vote was taken as follows, do we individualize water meters or continue with the existing system as our 'safety is to collect twenty fourFour including thirteen proxies were in favour; eight against and two declined. Mr. Dear insisted that individual sub-meters should still be installed to monitor each person's usage..."

[23] He stated that two letters were received from the executive committee, dated July 19, 2011 and August 15, 2011, in which the executive committee brought to the Claimant's attention maintenance fees outstanding and further requested payment for the outstanding amounts. These letters are marked GPB 13 and GBP 14, respectively. The letter marked GPB 13 outlines the outstanding amounts to be *"Maintenance Fees JA\$66,238.00, Insurance Cess US\$994.00*

and Front Wall Cess JA\$45,810.00.” The letter marked GPB 14, outlines “that your water supply will be disconnected effective August 22, 2011 for the non-payment of Insurance cess. The total amount outstanding is Nine Hundred and Ninety-Four (US\$994.00) US Dollars.”

- [24]** Mr. Brown stated that he sent a response by letter dated August 17, 2011, to the executive committee and enclosed cheques for the outstanding maintenance, insurance payment and the cess imposed for the construction of the front wall and fence. In addition, Mr. Brown stated that it was further outlined, in said letter which is marked GPB 15, of the claimant’s objection to the collection by the executive committee, for services which the PSP 440 did not have license for sale/resale and which was perpetrated under the threat of disconnection. He further stated that the strata lot was unoccupied as at 2011, due to the fact that the claimant, had commenced extensive renovation works.
- [25]** He stated that prior to the renovation works, he lived alone in the strata lot but since November 2013, resided there with his wife. He further stated that the water consumption which is being charged to the Claimant by the Strata Corporation, is the same as that charged to a couple with 2 children and a housekeeper who occupy a similar unit on the Strata Plan.
- [26]** The Claimant again made payments of the undisputed maintenance due and Mr. Brown, wrote a letter dated October 26, 2011 marked GPB 17, in which he expressed willingness to meet, ‘Maco Management’s fair obligations for reasonable and legitimate expenses incurred by the Strata Corporation’, by way of having the complex and each strata lot, separately metered in accordance with the law.
- [27]** The executive committee responded in their letter, dated December 6, 2011 and which is marked GPB 18, that guidance and advice of the CSC would be sought in the dispute between both parties pursuant to the Registration (Strata Titles) Act. Mr. Brown further stated that a letter dated May 3, 2012 was sent by the executive committee requesting payment for the period beginning

August 2011 up to that time. It is further stated that, payment was sent enclosed in a letter dated June 13, 2012 for the period November 2011 to June 2012.

- [28] The CSC sent a letter to the claimant dated October 23, 2012, marked GBP 21, enquiring into the dispute between the Claimant and PSP 440 and requesting that both parties attend a hearing scheduled for November 13, 2010 at 10:00am. Mr. Brown stated, that this letter was only received on November 5, 2012, a mere 8 days before the scheduled hearing. He wrote to the CSC indicating his unavailability and indicated that, he, the claimant's representative would be unavailable until around December 5, 2011 and stated that he attached copies of correspondences between Maco Management and the executive committee of PSP 440. He further requested that a representative of the Offices of the Utilities Regulation ("the OUR") and the NWC be in attendance. This letter is marked GBP 22.
- [29] He stated that written notices addressed to the former proprietors of strata lot 9, Steve Lyn, Suzanne Lyn and Mavis Lyn (who owned strata lot 9, prior to Mr. Brown's ownership), dated December 17, 2012 demanded payment of outstanding maintenance sums within 30 thirty days, were sent by executive chair of PSP 440, Karen Ffrench. He stated that the notices were affixed to the door of the property but which were not seen until several weeks later. Said notices are marked GBP 24. He stated that a letter sent from the CSC dated January 24, 2013, also addressed to the former registered proprietors, indicated that an application of powers of sale was received in respect of sums claimed by PSP 440. Said letter required that the former registered proprietors make payments of at least 50% of the disputed sums by February 18, 2013. The sums claimed is outlined in the amount of *"\$267,734.00 for outstanding maintenance charges as at December 1, 2012 and further US\$994.00 for outstanding insurance for as at period April 1, 2012."* This letter is marked GBP 25.
- [30] The CSC issued to PSP 440, by instrument dated February 19, 2013 and issued on March 11, 2013, a Certificate Pursuant to Exercise of Powers of Sale.

This was on the basis that PSP 440, had exhausted all means of obtaining payments owing to the Corporation and notifying the proprietor of the proposed sale of strata lot 9. This is also stated was affixed to the door of the strata lot. The Certificates are marked GBP 26.

- [31] Mr. Brown stated he received a letter dated March 26, 2013, from PSP 440, on April 19, 2013, to which was attached a copy of the Certificate of Power of Sale obtained by PSP 440. This letter is marked GBP 27. During this time, on April 12, 2013, the claimant, Maco Management became the registered proprietor of the strata lot. Mr. Brown stated that in his affidavit, that all further communications were ceased with PSP 440 and the CSC due to the conduct of each, as they regarded the Claimant as lacking legal standing for the purposes of the resolving the dispute.
- [32] Mr. Brown stated that he instructed his Attorneys-at-law to forward to PSP 440, the full balance of maintenance sums levied by PSP 440 from 2010 up to the ending of April 2013. This was sent via manager's cheque and/or drafts by letter dated April 23, 2013 in the amount of \$192,393.00 and US\$1,988.00 for maintenance and insurance cess respectively. This letter is marked GBP 28. Mr. Brown stated that, the property manager, refused to accept payment on April 29, 2013 from the bearer for the Claimant's Attorneys-at-law and as a result the payments were instead sent by registered mail. Mr. Brown stated he later received letter dated June 4, 2013, from the 1st Defendant's attorneys which returned these cheques/drafts sent for payment for sums owed and which outlined that the payments tendered would not settle the account claimed by PSP 440. This letter is marked GBP 37. Mr. Brown stated that no statement of account was submitted on behalf of PSP 440 to support what amounts were said to be outstanding.
- [33] He stated as a result of the aforementioned, he conducted searches at the National Land Agency's Office of Titles and discovered the instrument dated July 9, 2011, in which PSP 440 amended the By-Laws of the Strata Corporation, which gave it, inter alia, the right to enter into agreements with the

strata proprietors from time to time to provide services and amenities to their strata lots. They purportedly also had the right to withhold such services in the event of non-payment for same and for outstanding maintenance payments or any other breach of the Corporation's By-Laws.

- [34] Mr. Brown stated that he conferred with Mr. Steve Lyn and neither he nor any of the other registered proprietors received any notice of an Extraordinary General Meeting by PSP 440 to consider the amendments to its By-Laws in 2011 and so were not in attendance at the meeting. He stated that he became aware of a Daily Observer newspaper advertisement dated May 10, 2013, in which the OUR notified the public that the provision of water or sewerage services by an organization or person who was not in possession of a licence from the Minister with Portfolio responsibility was prohibited pursuant to Section 4A of the OUR Act and warned of enforcement action in the event of breaches of the OUR Act. The said newspaper tear sheet is marked GBP 30.
- [35] He stated that written enquiries were made to the OUR by letter dated May 13, 2013, regarding whether PSP 440 possessed a licence for the provision of sewerage or water services or was the provision of same. This letter marked GBP 31. He stated that, the response from Ambassador Peter Black, Secretary of the OUR, dated May 14, 2013, was that there was no record of PSP 440, having been issued with a licence to provide water or sewerage services and that PSP 440 had no legal authority to enter into such agreement with any Strata Proprietor with respect to the provision of water or sewerage services. This latter is marked GBP 32.
- [36] Mr. Brown stated in his affidavit, that against this background, he wrote to the CSC by letter dated May 20, 2013 and marked GBP 33, requesting to know what was their advice or opinion on the matter, in light of the publication by the OUR and also the fact that PSP 440 had no license. He stated that PSP 440, wrote a letter dated May 27, 2013, that it would elevate the matter to its legal committee on June 4, 2013. This letter is marked GBP 34. No further response was received from the CSC until December 3, 2013, when the Attorneys-at-law

for the Claimant, received two letters. The first letter dated June 12, 2013 and marked GPB 35, was written by the CSC to the OUR and the second letter dated July 18, 2013 and marked GPB 36, was a response from the OUR. Mr. Brown stated that given that the matter was not resolved, an appeal was subsequently filed with the SAT.

The Affidavit of Kevin Williams

- [37] As part of the case on behalf of Maco Management, an affidavit was deponed by Kevin A. Williams, Vice President of Legal Affairs at the NWC, was filed. This affidavit is marked GBP 38. Mr. Williams in his affidavit stated that in his capacity as Vice President, he is the principal Legal Officer of the NWC and inter alia, the keeper of records of all legal agreements entered into by and between the NWC and any parties. He further stated that, parties wishing to sell, supply or distribute or sub-distribute water processed or supplied by the NWC are required to enter into an agreement with the NWC.
- [38] In respect of strata corporations, Mr. Williams stated that water supplied by the NWC through a single water main to the strata corporation, are governed by sections 26 and/or section 27 of the NWC Act. The consent of the NWC is required and further pursuant to section 4 of the OUR Act, the strata corporation would be required to obtain a licence from the OUR to supply water and to be engaged in sewerage services. Mr. Williams outlined that supplying water to the proprietors on its premises, was contrary to section 26 and 27 of the NWC Act and is a criminal offence.
- [39] Mr. Williams stated that there were no records of an agreement between the NWC and PSP 440 for the provision of the supply of water. Therefore, under section 26 of the NWC Act, PSP 440, cannot legally distribute water without the expressed permission of the NWC. This information was conveyed to the Claimant's Attorneys-at-law, via email dated December 18, 2013 in response to their query on the matter of PSP 440 possessing a licence.

The Affidavit of Karen Ffrench

- [40] The Claimant has also included as part of its case, the affidavit of Karen Ffrench², and marked GPB 39. In her affidavit, Ms. Ffrench stated that the by-laws of PSP 440 were amended at its Annual General Meeting, held on March 8, 2008. A copy of the minutes were also exhibited. The decision was also taken that proprietors who were frequently late with their maintenance contributions payments, would be liable to have their water supply to their strata lots disconnected. In the minutes, there are no record of the particular resolution passed.
- [41] She stated that PSP 440, had sought and obtained the advice of the Commissioner on Strata Corporations on the matter of the inclusion of a contribution to water and sewerage rates as part of maintenance contributions. That advice, contained in a letter from the CSC dated November 23, 2011, she stated was to effect that there was nothing illegal or irregular in including those items as part of maintenance.

The Affidavit of Angela Davis-Walker

- [42] In her affidavit³, Mrs. Angela Davis-Walker, Property Manager of the executive committee of PSP 440, in response to the Affidavit of Mr. Gordon Brown in support of Fixed Date Claim Form, sought to address the issue of whether PSP 440 was required to obtain a license from the OUR.
- [43] Mrs. Davis-Walker, prior to 2010, sewerage was never charged to PSP 440 and when the charge was implemented by the NWC, that PSP 440 was in continuous communication with the entity, regarding adjustments to reflect sewerage charges to its bill on a monthly basis. She stated that in or about early 2014, representatives of the NWC, visited the Bay Pointe Property and indicated they were on a drive to change all water meters in the Montego Freeport area from analog to metric. They requested an interview, to which she

² Deponed on August 20, 2013

³ Filed on June 30, 2016

stated that she took part and after answering questions, the new meter was installed on or about June 6, 2014 and the subsequent bill for July 2014, showed an increase of over 100% of the previous bill.

- [44]** She stated that it was based on this increase, that PSP 440 contacted the NWC regarding the high cost and it was suggested that there may have been a problem with the new meter installed. She stated that the NWC responded by letter dated August 28, 2015, which is marked ADW-1 and which indicated that following an assessment, a final decision would be communicated within 30 days from the date of letter.
- [45]** Mrs. Davis-Walker, stated that checks on the meter and the pipes by NWC representatives and the conclusion was communicated by letter dated September 26, 2014 from the NWC, that there was nothing wrong with the meter or its calibration. This letter is marked ADW-2. She further stated that the NWC was asked to assist in resolving the matter by checking for leaks. The Leak Detection team from NWC determined that the inlet valves were found defective and apart from a few bathroom leaks, the complex had no leaks. The findings of which were sent by the NWC via letter dated December 15, 2015, which is marked ADW-3.
- [46]** On or about November 10, 2015, PSP 440 wrote to the NWC requesting a rate change based on the fact that PSP 440 was being charged at commercial rate rather than a condominium rate. She stated that the NWC replied by requesting the Certificate of Registration with the Commission of Strata Corporation and same was submitted which lead to a grant of the rate change. Said letters from NWC dated November 19, 2015 and January 13, 2016, respectively are marked ADW-4.
- [47]** Mrs. Davis-Walker stated, that at no point during the communications with NWC, was PSP 440 ever requested to produce or obtain a license by the NWC or that they were acting in breach of the NWC Act or the OUR Act. She further stated that the NWC, has continued uninterrupted supply to the property through the bulk meter.

CLAIMANT'S SUBMISSIONS

- [48] Counsel for the Claimant argues that PSP 440 breached section 26 of the NWC Act by providing water utility services to strata lots without a license or permission from the relevant authorities (NWC or OUR). It is further contended that charges under section 5(2)(b) should only relate to common property, and thus the first defendant cannot levy charges for water and sewerage consumed within individual units. Counsel asserts that the amendment of the By-Laws by the first defendant to allow such charges was done without informing the registered proprietors and is therefore null, void, and unenforceable.
- [49] Counsel cites **South Devon Water Board v Gibson** [1955] 2 QB ⁴ to support the position that the 1st Defendant, which receives water through a bulk meter and distributes it within the common property, is effectively supplying water. However, unlike *South Devon Water Board v Gibson*, the 1st Defendant is not authorized by the relevant authorities to provide this service, making their actions unlawful. Counsel for the Claimant also highlights that the 1st Defendant's failure to obtain the necessary license to supply water renders their charges invalid and exposes them to criminal liability under section 28 of the NWC Act. The 1st Defendant's actions are described as arbitrary and unlawful.
- [50] Additionally, counsel contends that the 2nd Defendant's decision was unreasonable, irrational, and illogical, citing **Re Duffy** [2007] UKHL 4 ⁵ and **HMB Holdings Ltd v Cabinet of Antigua & Barbuda** [2007] UKPC 37⁶ to support the unreasonableness of the 2nd Defendant's findings. The 2nd Defendant misinterpreted section 26 of the NWC Act, which should cover the supply of water within the premises, not just the act of taking water from the premises. Judicial review of the second defendant's decision is sought, as it is argued that

⁴ [1955] 2 QB

⁵ [2007] UKHL 4

⁶ [2007] UKHL 4

no reasonable tribunal could have arrived at such a conclusion. Counsel also refers to **Douglas Campbell v The Strata Appeals Tribunal and PSP No. 3 (Carib Ocho Rios)** [2015] JMSC Civ 46⁷, asserting that the Claimant's appeal was timely, contrary to the 2nd Defendant's ruling that it was out of time.

- [51] The Claimant further argues that the second defendant's failure to enforce the proper legal framework allowed the first defendant to enforce unlawful charges disguised as maintenance fees for unlicensed services. Thus, the claimant contends that the first defendant should not have been enabled to collect any such sums.

FIRST DEFENDANT'S SUBMISSIONS

- [52] The 1st Defendant submits that, as PSP 440 accessed water through a bulk meter, it was not involved in supplying or distributing water. Consequently, it did not breach the NWC Act or the OUR Act and did not require a license, contrary to the Claimant's position, which the First Defendant deems as a pedantic interpretation of the laws. Relying on **South Devon Water Board v Gibson**, the 1st Defendant asserts that section 4(2)(a) of the NWC Act supports their stance that the First Defendant's occupants, as multiple consumers, receive bulk water supply, with the strata being billed based on usage.

- [53] Furthermore, the 1st Defendant distinguishes the case of **South Wales Electricity Plc v Director General of Electricity Supply** [1999] EWHC Ch 200⁸, which the Claimant cited, arguing that the 1st Defendant was acting within its powers and was not a utility provider. Therefore, no license was required for the bulk water supply arrangement, unlike in the case of **South Wales**, where the case involved a utility provider.

⁷ [2015] JMSC Civ 46

⁸ [1999] EWHC Ch 200

[54] The 1st Defendant also argues that the Claimant's appeal was not within the statutory time limits. Citing **Strata Appeals Tribunal v Douglas Campbell** [2016] JMCA App 15⁹, the 1st Defendant refers to Phillips JA's ruling, which clarified the 30-day time limit for challenging the issuance of a Certificate of Sale. The 1st Defendant submits that, in the instant case, the Claimant's appeal was filed well beyond the statutory period, as the Claimant was aware of the relevant decisions but did not challenge them within a reasonable time. The delay, exceeding two years for 2010 decisions and one year for 2011 decisions, contradicts the reasonable timeframe requirement for appealing such decisions.

SECOND DEFENDANT'S SUBMISSIONS

[55] Counsel for the 2nd Defendant argues that, under section 4(1) of the RSTA, a strata corporation is a body corporate comprising the proprietors of all strata lots, which comes into existence upon the registration of the strata plan, thereby giving the strata lot proprietors collective legal personality. The NWC supplies water through the corporation, which represents the proprietors, rather than to individual owners or occupiers.

[56] It is further argued that individual owners or occupiers of strata lots are to be regarded as persons in possession of premises supplied with water by the Commission, as per section 26 of the National Water Commission Act. The 2nd Defendant asserts that no supply is made by PSP 440 to individual proprietors. The tribunal's determination of whether an offence was committed by PSP 440 under the NWC Act is a matter for the court. Counsel relies on the test from **Attorney General of Belize and Others v Belize Telecom Limited and Another** [2009] UKPC 10¹⁰ and its application in **Jamaica Public Service Co**

⁹ [2016] JMCA App 15

¹⁰ [2009] UKPC 10

Ltd v Meadows and Another [2015] JMCA Civ 1 to argue that Parliament intended to address issues such as strata developments.¹¹

- [57] In the referenced case, the Court of Appeal upheld the decision of Sykes J, who ruled that although the license granted to the Jamaica Public Service Company was valid, the exclusive rights to transmit electricity under the license were not valid. The Minister was authorized to issue a license but erred by granting exclusivity. The consolidated appeal from Jamaica Public Service contended that the judge misinterpreted the relevant legislation.
- [58] Brooks JA, citing **Attorney General of Belize** [2009] UKPC 10, emphasized that where a document is silent, the court must focus on discovering its true meaning, rather than improving or altering it. The court must interpret the instrument objectively, based on reasonable background knowledge.
- [59] Counsel also submits that the obligation to pay water rates to the NWC lies with the strata corporation, which is responsible for the meter and payment. There is no basis for the tribunal to have applied a different meaning to the word “obligation” under the Act, and contributions can be levied on proprietors per section 5(2)(b).
- [60] Regarding the Order for Sale, the 2nd Defendant submits that the Claimant presented no evidence to the Tribunal of any defect in the proceedings leading to the Order or any procedural irregularity that would render it improper.
- [61] While conceding that the Tribunal erred in applying the 30-day time limit under section 3 of the RSTA in the Claimant's appeal, Counsel submits that this error does not invalidate the Tribunal's decision, as the Tribunal still considered the substantive grounds of the appeal.

¹¹ [2015] JMCA Civ 1

[62] Finally, the 2nd Defendant contends that to establish a remedy based on irrationality or Wednesbury unreasonableness, the Claimant must demonstrate that the decision was so perverse that no reasonable body could have reached it. The 2nd Defendant asserts that the SAT's decision was reasonable, based on the law and evidence before it.

THE LAW

The National Water Commission Act 1963 (hereinafter "the NWC Act")

[63] The relevant section of the act are as follows:

Section 26:

"Any owner of 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 in accordance with a licence from the Commission, shall be guilty of an offence."

The Office of the Utilities Regulation Act 1995 (hereinafter "the OUR Act")

[64] The relevant section of the act is:

Section 4A:

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

[65] The Registration (Strata Titles) Act (hereinafter "the RSTA")

The material section of the act are as follows:

Section 3B:

“(1) The functions of the Commission shall be to-

- a) monitor, regulate and supervise corporations incorporated by section 4;*
- b) keep or cause to be kept a register of such corporations to be known as “The Register of Strata Corporations”*
- c) facilitate the resolution of disputes, in particular, those between a corporation and a proprietor arising from any matter to which this Act relates;*
- d) consider complaints from proprietors that the amount of contribution levied under section 5(2)(b), is unreasonable or inequitable;*
- e) enforce the by-laws; and*
- f) perform such other functions as may be conferred upon it by or under this Act, or as the Minister may by order prescribe”*

[66] Section 5A of The RSTA allows a strata corporation to exercise powers of sale in respect of a strata lot for which the owner has failed, neglected or refused to pay maintenance for a period exceeding 30 days:

“5A.

(1) Where for a period exceeding thirty days, a proprietor fails, neglects or refuses to pay to the corporation, all or any part of the contribution levied pursuant to section 5(2)(b), the corporation shall act in the manner specified in subsection (2).

(2) For the purpose of subsection (1), the corporation shall notify in writing the proprietor concerned and his agent, if any, and the mortgagee of the strata lot, if any-

(a) of the outstanding amount of the contribution owing by the proprietor and the period for which the contribution is owed, outlined in a related statement of accounts;

(b) of the amount of interest accruing on the contribution and the period for which interest is payable, outlined in a related statement of accounts;

(c) that the proprietor is required, within thirty days from the date of the service of the notice, to pay the outstanding contribution and the amount of interest, if any accruing thereon;

(d) that if the outstanding contribution and interest accrued thereon are not paid within the period specified under paragraph (c) or make suitable arrangements to pay that amount, the corporation may sell the strata lot by public auction or by private treaty in accordance with section 5C(4);

(e) that the proprietor, if aggrieved by the amount of contribution stated in the notice, may lodge an appeal if he has paid at least fifty percent of the amount owing or such other amount as may be agreed with the corporation.”

[67] Section 5 (2) (b) and (e) outlines the powers of the corporation and provides as follows:

“(2) The powers of the corporation include the following-

(a)...

(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;

(c)...

(d)...

(e) to exercise a power of sale in respect of a strata lot in accordance with the provisions of this Act.”

[68] Section 15A addresses appeals and provides for the establishment of the Strata Appeals Tribunal. It provides as follows:

“15A. (1) There is hereby established for the purposes of hearing appeals,

a body to be known as the Strata Appeals Tribunal, and the provisions of the Fourth Schedule shall have effect with regard to the constitution and operation of the Tribunal and otherwise in relation thereto.

(2) Any person aggrieved by a decision of-

- i. the corporation, in the case of the aggrieved person being a proprietor of a strata lot; or*
- ii. the commission, may appeal to the Tribunal in the prescribed manner, upon payment of any prescribed fee.*

(3) Before determining an appeal, the Tribunal shall give the parties the opportunity to be heard by the Tribunal.

(4) The Tribunal may, on appeal under subsection (2)-

- i. allow the appeal and set aside or vary the decision of the corporation or the Commission, as the case may be; or*
- ii. dismiss the appeal and confirm the decision of the corporation or the Commission, as the case may be.*

(5) The amount in respect of which the Tribunal may order payment under subsection (6) of section 5A, shall not exceed the amount in respect of which a Resident Magistrate’s Court has jurisdiction in actions from contract.

(6) Where an order of the Tribunal is made pursuant to subsection (6) of section 5A, the Tribunal shall forthwith cause the order to be lodged with the Clerk of Courts for the parish in which the land comprising the strata lot to which the order relates is situated.”

[69] Section 9 of the RSTA outlines the provisions for By-laws in respect of strata corporations. Specifically, in respect of amendment of the By-laws, section 9(2)(a) (prior to the 2009 amendment) provides:

“9. (1) Subject to the provisions of this Act the control, management, administration use and enjoyment of the strata lots and the common property contained in every registered strata plan shall be regulated by by-laws.

(2) The by-laws shall include-

(a) the by-laws set forth in the First Schedule, which shall not be amended or varied except by unanimous resolution....”

[70] In **Douglas Campbell v The Strata Appeals Tribunal and PSP No 73 (Carib Ocho Rios)** [2015] JMSC Civ 46, Laing J states in respect of appeals lodged to the tribunal at paragraph [23] and [24] that:

“[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] It is my opinion and finding that it is a decision pursuant to section 3B to which the thirty-day limit imposed by 3B (6) specifically applies and that it applies exclusively to appeals pursuant to that section. Had the draftsman intended the thirty-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.”

[71] At paragraph 26¹², he further stated:

“In absence of any expressed time limits imposed on appeals under sections 5A and 15A the Claimant was entitled to bring its application within a reasonable time. I find that the Claimant did bring his appeal within a reasonable time given the Court’s acceptance of his explanation for the delay as contained in his affidavit, which was that he did not become aware of the Corporations assessment and delinquency notices dated 23 March 2011 until sometime in January 2012.”

[72] The grounds for judicial review as explained by Lord Diplock in **Council of Civil Service Unions v Minister of the Civil Services** [1985] AC 374 outlines three heads in relation to decision making powers, namely illegality, irrationality and procedural impropriety:

“By illegality as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By ‘irrationality’ I mean that can now be succinctly referred to as - Wednesbury unreasonableness (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1984] 1 KB 233). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it...

I have described the third head as - procedural impropriety rather than failure to observe basic rules of natural justice or failure to act with

¹² JMSC Civ 46

procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”¹³

DISCUSSION

Whether PSP 440 was in breach of the National Water Commission Act and Office of Utilities Regulation Act.

- [73] The Court accepts the submissions of Counsel for the Claimant that PSP 440 has acted in breach of section 26 of the NWC Act by providing water utilities without a statutory exception, a license, or permission from the relevant authorities, namely, the NWC or the OUR. There is no legal basis for a Strata Corporation to unilaterally assume the role of a utility provider in these circumstances.
- [74] Further, the Court is of the view that charges levied under section 5(2)(b) of the Registration (Strata Titles) Act (the “RSTA”) must relate strictly to expenses concerning common property. As such, the 1st Defendant has no authority to impose charges on individual unit owners based on expenses that do not pertain to the common property. Consequently, the Court agrees that any attempt by the 1st Defendant to increase maintenance fees to cover water and sewerage consumed within each unit does not fall within the ambit of section 5(2) of the RSTA. The statutory framework is clear on what can be recovered

¹³ [1985] AC 374, 410 F-H

from proprietors, and the 1st Defendant's actions fall outside those statutory boundaries.

- [75] The Court also agrees that the Extraordinary General Meeting convened by the 1st Defendant, which resulted in amendments to the By-Laws permitting it to enter into agreements to provide services to proprietors, was procedurally defective. Neither the former registered proprietors nor the Claimant were made aware of this meeting. In light of PSP 440's lack of a valid license, the Court finds that this purported amendment to the By-Laws is null, void, and unenforceable.
- [76] The case of **South Devon Water Board v Gibson** [1955] 2 QB lends strong support to the Claimant's position. The Court finds that the 1st Defendant, as the entity receiving water from the NWC through a bulk meter, is in control of the distribution network within the common property. The 1st Defendant, not the NWC, owns and maintains the pipes that traverse the common areas and supply water to individual strata lots. The absence of NWC sub-meters for individual units underscores the fact that the NWC does not supply water directly to each proprietor.
- [77] The Court accepts the Claimant's reliance on the South Devon Water Board case, which established that an entity supplying water via a controlled distribution network is engaged in the act of supplying water under the relevant statutory provisions. A critical distinction, however, is that in South Devon, the Board was authorized to provide water services, whereas the 1st Defendant in this case lacks such authorization. The Court therefore finds that the 1st Defendant's attempt to charge for water services without the requisite license is unlawful. The Defendant was engaged in the business of water supply and distribution within the meaning of the Act, and in the absence of proper authorization, it is not entitled to impose charges on the Claimant.
- [78] The Court further agrees that, since the 1st Defendant has no ownership interest in the individual strata lots, it cannot lawfully transmit water from the NWC

pipeline to private units and then demand payment. While it may contract with the NWC on behalf of unit owners for water used in common areas, it has no legal basis to charge proprietors for water supplied to their individual units.

- [79] The failure of the 1st Defendant to obtain a license from the NWC and OUR is fatal to its claim for payment from the Claimant. Moreover, this non-compliance renders the 1st Defendant and its officers liable to criminal sanctions under section 28 of the NWC Act.
- [80] The Court accepts that the Claimant cannot be compelled to pay the increased maintenance charges, especially in light of its infrequent occupancy of the strata lot. Since the 1st Defendant is in breach of the NWC Act and lacks the necessary license to charge for water, the Court agrees that it should not be permitted to persist in its arbitrary and unlawful actions.
- [81] Further, the Court finds support in the case of **South Wales Electricity Pic v Director General of Electricity Supply** (1999) EWHC Ch 2005, in which an electricity company that also operated as a water supplier was found to be acting outside the scope of its statutory license by metering and charging for both utilities. The principle established in that case applies in the present case, the 1st Defendant has no authority to impose charges beyond the limits of its legal authority, regardless of convenience or perceived benefit to proprietors.
- [82] Accordingly, the Court determines that the 1st Defendant had no legal basis to levy the increased charges on the Claimant, nor did the Claimant consent to such charges. The Court also finds that the 1st Defendant was not entitled to a Certificate for Sale of the Claimant's unit, as the Claimant had paid all amounts lawfully due. The 1st Defendant's refusal to accept those payments further highlights its unjustified and unlawful conduct.

Whether the CSC's issuance of a certificate for exercise of power of Sale of Strata Lot 9 was in contravention of the Registration (Strata Titles Act)

[83] The 2nd Defendant expressed the view that:

"There is no averment in the affidavit evidence provided by the Appellant through its principal that there was any defect in the proceedings leading up to the grant of the Order for Sale. Certainly, there is no averment of a lack of due process or any factor which would render the grant of the Order for Sale on its face irregular or improper. Indeed, the submissions advanced by Queen's Counsel, Mrs. Kitson did not advance any such position."

[84] The Court agrees with the Claimant's position that the 2nd Defendant's finding was wholly illogical and unsupported by the evidence. The Court also accepts that, a year after the dispute arose, the Claimant explicitly informed the 1st Defendant that it would need to seek the guidance of the CSC on the matter.

[85] Sometime in 2011 but unknown to the Claimant the 1st Defendant then referred the matter to the CSC. The CSC did not afford the Claimant an opportunity to be heard in the matter in 2011 when it purportedly made its unilateral finding and communicated this decision to the 1st Defendant. The Claimant received correspondence dated December 6, 2011 from the 1st Defendant in which it reported to the Claimant: "...We sent your letter, along with letters from the [NWC] ...and other relevant documents to the Commission of Strata Corporations. The Commission's reply to us is that in their opinion, we were not engaged in distributing or redistributing water as you had said and did not see an issue."

[86] Section 3B (1) of the Registration (Strata Titles) Act provides, inter alia that "The functions of the Commission shall be to (c) facilitate the resolution of disputes. in particular, those between a corporation and a proprietor arising from any matter to which this Act relates /and/ (d) consider complaints from proprietors that the amount of contribution levied under s. 5(2) (b) is unreasonable or inequitable".

[87] The CSC therefore has a quasi-judicial role in terms of the Strata Titles Act or at a minimum, that of mediator. It cannot be that in discharging its statutory functions, it is exempt from the most basic and fundamental principles of administrative law, the avoidance of bias, audi alteram partem and transparency in its decision-making process.

[88] The evidence before the 2nd Defendant was that:

- a. The CSC was approached by the 1st Defendant for its views in the dispute between the Claimant and itself;
- b. The CSC took a decision on the issue sometime in or about late 2011, without affording the Claimant an opportunity to be heard and communicated said decision to the 1st Defendant (but not to the Claimant, to whom the 1st Defendant had given the CSC correspondence with its contact information);
- c. The finding made by the CSC in 2011 was on a matter of esoteric law on which it should have sought advice from the Office of Utilities Regulation and/the NWC and indeed was invited to do so by the Claimant;
- d. The CSC clearly did not seek the advice of the OUR until June 13, 2013, some 18 months or longer after it had made a decision on the legality of the supply of water by Strata Corporations;
- e. The CSC was evidently motivated to communicate with the OUR only after it was again written to by the Claimant on May 20, 2013 seeking to know the basis upon which made its earlier ruling;
- f. In any event, the finding made by the CSC was wrong, and wholly at variance with the opinion of the OUR, which confirmed that Strata Corporations such as the 1st Defendant were engaged in the supply of water (in the circumstances outlined)
- g. Having taken a misinformed decision on the matter sometime in late 2011 and already determined its position, the CSC then wrote to the Claimant by

letter dated October 23, 2012 purporting to invite it to a "hearing" to inquire into the dispute between the Claimant and the 1st Defendant.

h. In responding to the CSC by letter dated November 5, 2012, the Claimant sent it all the relevant documentary evidence in its possession and urged it to seek the attendance of representatives of the OUR and NWC6;

i. The CSC sought to convene a hearing on dates that were inconvenient to the Claimant and its Counsel. It wrote to the Claimant on November 12, 2012 and thereafter abruptly ceased all communication with the Claimant.

j. The CSC then wrote to the former registered proprietors by letter dated January 24, 2016 which was never sent to the Claimant by it; made its summary ex parte decision then gleefully issued its Certificate in Exercise of Powers of Sale the following month, again without communicating with the Claimant, with whom and whose Counsel it was in contact, barely two and a half months after it had first written to the Claimant notwithstanding the provisions of section 5A(2) of the Registration (Strata Titles) Act.

k. To date, despite the information now before it, the CSC has never recanted its decision and has offered no opinion whatsoever on any of the material sent to it by the Claimant.

l. The issue of the Certificate of Sale by the CSC and the basis for so doing was expressly a ground of appeal before the Tribunal

[89] The Court accepts the position advanced by Counsel for the Claimant that any reasonable tribunal of fact ought to have made a fair determination regarding the propriety of the CSC's conduct, given its statutory role as the designated mediator of disputes. In particular, the Court concurs that, in light of the very challenge to the issuance of the Certificate of Sale by the CSC, it was unnecessary for the Claimant or its Counsel to make an explicit allegation of gross impropriety (however justified) for a finding to be made in that regard.

[90] Further, the Court is of the opinion that the subject matter of the dispute, and consequently the foundation upon which the Certificate issued by the CSC was based, stemmed from a utility that had been unlawfully supplied by the 1st Defendant. As such, the Certificate could not have been validly issued unless and until a precise, quantitative assessment had been conducted to determine any maintenance contribution fairly owed by the Claimant to the 1st Defendant, and the Claimant had nevertheless refused to make such payment.

[91] It is evident from the actions of the CSC that it committed serious breaches of both law and natural justice in the execution of its functions and in the issuance of the Certificate under its Power of Sale. The Court finds that the 2nd Defendant's conclusion to the contrary was irrational, illogical, and wholly unreasonable.

Whether the Appeal lodged by Maco Inc. was within the time limit of the Registration (Strata Titles) Act

[92] The Court is of the opinion that the 2nd Defendant incorrectly interpreted and applied the statutory provisions of both the NWC Act and the Registration (Strata Titles) Act. In support of this position, Counsel for the Claimant relies on the case of **Douglas Campbell v The Strata Appeals Tribunal and PSP No. 3 (Carib Ocho Rios)** [2015] JMSC Civ 46, arguing that the appeal was filed within the prescribed time and that the 2nd Defendant erred in ruling that it was out of time. The Court accepts this reasoning and finds that the 2nd Defendant's determination was flawed.

[93] In the *Campbell* case, the Claimant, as the owner of one apartment and the beneficial owner of two others within the strata, fell into arrears in maintenance fees and was subsequently issued with a delinquency notice. This notice outlined the sums outstanding and the potential for an application to the Commission for Strata Corporations (CSC) for the power of sale. The CSC later issued certificates of sale under section 5C(4), having determined that all

reasonable efforts had been made to recover the outstanding amounts and that the Claimant had been properly notified of the proposed sale. The Claimant then lodged an appeal under section 15A(2)(b) of the RSTA against the amount of contribution levied by the corporation. However, the Tribunal dismissed the appeal on the ground that it was out of time. Seeking judicial review, the Claimant challenged this ruling, and Laing J determined that:

"[22] ...Section 15A is therefore a comprehensive appeals section which provides for appeals from decisions of a strata corporation as well as the Commission and is noticeably devoid of any time limit or deadline for appeals to be brought."

[94] His Lordship further reasoned:

"[27] I find that the Tribunal erred in the construction it applied to the Act and in applying the 3-month time limit to the Claimant's appeal, no such deadline being applicable (for the reasons outlined in this judgment). The Claimant's appeal, having been brought within a reasonable time (considering his explanation for the delay), was entitled to and deserved to have his appeal considered on its merits."

[95] The Court finds that the facts in the present case closely align with those in *Campbell*, save for the additional fact that the Claimant maintained ongoing dialogue with the 1st Defendant. During these discussions, the 1st Defendant used the address 30-34 Market Street, White Sands Beach P.O., Montego Bay, St. James for communication. However, despite being aware that this was the address of the agent of the registered proprietor for the purposes of section 5A(2) of the RSTA, the 1st Defendant failed to serve the Claimant with a copy of the notice at that address.

[96] Further, the Court accepts the Claimant's reliance on **Douglas Campbell v The Strata Appeals Tribunal** [2016] JMCA App 15, in which Justice Hillary Phillips JA endorsed the reasoning of Laing J. The Court also finds that the Claimant only became aware of the Certificate on April 19, 2013, at which point his duty

to act within a reasonable time arose. The Court agrees that the Claimant, having lodged an appeal on July 23, 2013, just three months after becoming aware of the issuance of the Certificate and after exhausting all attempts to tender payment in accordance with section 5A(2)(e) of the RSTA—acted within a reasonable time. The Court is therefore satisfied that the Claimant's actions were reasonable, particularly as he had been awaiting a response from the 1st Defendant regarding a proposed meeting between the parties.

[97] For these reasons, the Court accepts the Claimant's submission and finds that the appeal was properly filed within time.

Whether the Decision of the Strata Appeals Tribunal is Irrational and/or Unreasonable

[98] The Court agrees with the Claimant's submission that the findings of the SAT in relation to the 2nd Defendant are unreasonable, irrational, and illogical. The Court is of the view that the tribunal misconstrued section 26 of the NWC Act by failing to find that the 1st Defendant was supplying water and sewerage services within the premises to the Claimant, as contemplated by the Act.

[99] In accepting the Claimant's submission, the Court recognizes that the implications of the 2nd Defendant's decision satisfy the unreasonableness test as set out in **Re Duffy** [2007] UKHL 4. That test establishes that a decision is unreasonable if it is not one that a reasonable public authority, properly directing itself in law, would have made when considering all relevant facts and mandatory considerations.

[100] Further, the Court adopts the reasoning in **HMB Holdings Ltd v Cabinet of Antigua & Barbuda** [2007] UKPC 37, where Lord Craighead of the Privy Council articulated the test for irrationality.

"The test for irrationality will be satisfied if it can be shown that it was one which no sensible person who had applied his mind to the question to be decided could have arrived at."

[101] Applying this principle, the Court is persuaded that the decision of the 2nd Defendant was not only unreasonable but also irrational, as demonstrated by the facts presented in support of the Claimant's case.

Decisions

- I. The court finds that the Claimant was not treated fairly by the 1st and 2nd Defendants.
- II. The Claimant's representative remitted via cheque the outstanding maintenance, insurance and the cess impose in the construction of the front wall and fence.
- III. Further ,the Claimant wrote to the CSC indicating his unavailability and that he the Claimant's representative would be unavailable until December 5, 2011. He stated that he attached copies of correspondences between Maco Management and the Executive Committee of PSP 440. He requested that a representative of the Office of the Utilities Regulation ("the OUR") and the NWC attend. This letter is marked GBP 22.
- IV. The Claimant received no further comment on the correspondences sent to the CSC nor any indication as to whether the representatives of the OUR and the NWC would be allowed to attend the meeting. The Claimant received a letter from the CSC, that the meeting between the parties would be adjourned until December 6, 2012. Communication was also made by telephone to indicate to CSC the unavailability of the Claimant's Counsel for the meeting which was scheduled. The Claimant heard nothing further from CSC.
- V. For the reasons stated above the following orders are made.

Orders

1. An Order of Certiorari to quash the order and or finding of the Strata Appeals Tribunal that Proprietors Strata Plan 440 ("PSP 440") was not supply 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.

2. An Order of Certiorari to quash the order and or finding [of] [t]he Strata Appeals Tribunal that it was within the power of Proprietor Strata Plan 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).
3. 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.
4. 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.
5. 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. (“Maco Management”).
6. A Declaration that Proprietors Strata Plan 440 unlawfully supplies water for private consumption to the proprietors of PSP 440 without the requisite licence issued pursuant to sections 4 and 4A of the Offices of the Utilities Regulation Act and contrary to section 26 of the National Water Commission Act.

7. A Declaration that Maco Management Incorporated is not indebted to PSP 440 for sums claimed by PSP 440 for usage and sewerage charges of NWC and included in the “maintenance charges” in relation to Strata Lot numbered 9 to Proprietor Strata Plan 440 registered at Volume 1229 Folio 675 of the Register Book of Tiles in the name of Maco Management Inc.
8. A Declaration that PSP 440 must account to Maco Management Incorporated for all the sums paid by it to PSP 440 after September 2010, in excess of maintenance charges that were properly due and in particular, those attributed to the increased cost of water and sewerage.
9. A Declaration that the amendment of its By-laws by PSP 440 without notifying all the registered proprietors of the strata lots, including Maco Management Incorporated, of the Extraordinary General Meeting which was convened for the purpose of amending the By-laws was unlawful and contrary to the rules of natural justice.
10. A Declaration that the amendment of the By-laws of PSP 440 which purportedly authorized the PSP 440 to collect charges for water supply from proprietors and to disconnect the water supply of each proprietor for non-payment of the charges is unlawful and accordingly is void.
11. A Declaration that the Certificate Pursuant to Exercise of Powers of Sale issued by the Commission of Strata Corporations 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 Incorporated is null and void.
12. A Declaration that Maco Management Incorporated lodged its appeal of the decision of the Commission of Strata Corporations to the Strata Appeals Tribunal within the statutory timeframe as mandated in section 5(6), 5A(1) and 5A(2)(c) of [the] Registration (Strata Titles) Act.
13. Costs to the Claimant to be taxed if not agreed.

