

acquired her apartment. However, at the time of filing the claim the monthly charge had risen to \$17,000.00. She admits that from around 2003, she had begun to experience difficulties in making the monthly payments, because she had become unemployed.

The Claimant's Case

- [4] The Claimant complains that from 3rd November 2003, the Defendant disconnected the electricity and the water supply to her apartment. She says for a brief period, water was restored, after she had “begged” the Defendant, to restore the water and light. She noted that she had earlier made a payment towards the arrears and the apartment was rented during the period of restoration.
- [5] As of February 2011, her arrears for maintenance charges was \$1,056,338.92. She further complains that when the electricity was disconnected; the electrical breaker was removed from her apartment and as a result, the apartment has been in darkness. Additionally, she highlighted that she had been unable to cook, bathe, wash and use the bathroom due to the disconnection of the water.
- [6] The Claimant in her affidavit dated 10th June 2011, admits to owing maintenance charges, “*from November 2003 up to date*”. The Claimant has contended that the Defendant has calculated her maintenance charges without any reduction being made for the period she was without electricity, water and gas. That the costs of those services are constituted in the maintenance charge and no deductions have been made. The Defendant should be able to calculate the deductions from her maintenance charges.
- [7] The Claimant lodged a complaint with the Commission of Strata Corporations, and exhibited the Commission's acknowledgement of the Claimant's refusal of the Defendant's offer to apply an offset of \$222,461.03 on the basis that the reduction was too small. The Claimant complains that she has lost the use of her apartment. She also complains that in an effort to offset the maintenance arrears she sought permission from the Defendant to rent out the apartment. The Defendant however refused the Claimant's request.
- [8] The Claimant states that she is aware that the bye-laws of the Defendant include a provision purporting to give the Defendant the power to disconnect the supply of water and electricity and other services to her apartment. She contends that such a provision is unlawful, and seeks compensation for the unlawful act. She has no objection to a proposed sale of her apartment and that the amount

deducted from the proceeds for arrears should reflect the absences of the services from her apartment.

The Defendant's Case

- [9] The affidavit of Shelly-Ann Weston, Property Manager of the Strata Complex, in response to the Claimant, admits that the supply of water, electricity and gas were included in the maintenance charges levied.
- [10] Since May 2003, payments were paid on account without significantly reducing the debt. The last payment made by the Claimant, was in September 2006. Ms. Weston contends that the Claimant signed the bye-laws "*and therefore it is assumed that she understood that the Corporation could exercise its rights to discontinue the provision of common services to her apartment, including electricity, water and liquid gas.*"
- [11] It was alleged that the Claimant having refused the offer of July 9th, 2010, a further offer of \$493,830.35 which comprised 70% of the total consumption allotted to Lot # 11, for the periods January 2005 to December 2011 was extended. This offer was also refused by the Claimant, for the reason that the reduction was coupled with the condition that the Claimant pays the Defendant's legal fees of \$380, 226.80.
- [12] On the 28th June 2011 the Claimant filed a Fixed Date Claim Form, seeking the following:
- (i) A declaration that the disconnection by the Defendant of the water, electricity and gas supply, to the Claimant's apartment No. 11, 19 Seymour Avenue, Kingston 6, in the parish of St. Andrew in or around November 2003, was unlawful.
 - (ii) An Order that the Claimant be compensated in damages for the unlawful disconnection of the said water, electricity and gas supply.
 - (iii) A declaration that for a period November 2003 to the date hereof, during which the said services were disconnected from the Chambers of the said apartment, there should have been no maintenance charges for those services.
 - (iv) An order that there be a reduction in the maintenance charges payable by the Defendant to reflect the non supply of the said services to the Claimant said apartment, for the said period.

[13] On the 15th February 2012, McIntosh J, ordered inter alia;

- (i) The Defendant is to proceed with the sale of the apartment No. 11 at 19 Seymour Avenue, Kingston 6, in the parish of St. Andrew.
- (ii) The monies from the sale of the apartment are not to be disbursed without the order of the Court.
- (iii) The Claimant undertakes to deliver the keys to the apartment to the Strata Corporation and to sign any and all necessary documents to effect the sale of the apartment.
- (iv) Upon receipt of the keys to the apartment the Claimant's liability for maintenance will cease.

[14] The issues joined between the parties are;

1. Was the bye-law that provided for disconnection of the proprietors supply of water and electricity for non-payment, invalid for being repugnant to the Registration (Strata Titles) Act?
2. If the bye-law was void, can proprietor's acquiescence and acceptance make it enforceable against him?
3. Is it permissible for the corporation to include in the maintenance charge, the cost of services that have not been consumed by the proprietor?

Analysis

[15] In the **Registration of (Strata Titles) Act**, Section 9 (1), provides that 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 bye-laws. Additionally, Section 9(3), provides for bye-laws to be made by the corporation, in the place of the First Schedule and the Second Schedule, which would remain in force until such bye-laws are made.

[16] The Executive Committee is empowered by Bye-law 1. 111 (b) of Strata Plan # 210A, registered with the National Land Agency on the 27th day of October 1980, to;

“determine the amount to be levied on each proprietor as an annual contribution in the proportion which the unit entitlement ... failing which, the entire amount of the annual levy shall become due and owing as and may be collected

from the proprietors in default as a debt ... but not limited to discontinuance of common services provided by the corporation...

Was the disconnection of the light and water lawful?

[17] Counsel for the Claimant submitted that the bye-law which grants the Defendant the power to disconnect water and electricity supply to the Claimant's apartment, is unlawful because its ultra vires to the **Registration (Strata Titles) Act**. According to Counsel, nothing in the main Act confers such a power and the Bye-law is therefore repugnant the **Registration (Strata Titles) Act**.

[18] Section 5, of the **Registration (Strata Titles) Act**, provides, for the duties and powers of the Corporation as follows;

- (a) "To establish a fund for administrative expenses sufficient in the opinion of the corporation for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any of its other obligations;
 - (b) To determine from time to time the amounts to be raised for the fund referred to in paragraph (a) and to raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective lots .
 - (c) To recover from any proprietor, **by any action for debt in any court of competent jurisdiction, any sum of money expended by the corporation** for repairs to or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building which constitutes or includes the strata lot of that proprietor;
- (3) Subject to the provisions of subsection (4) any contribution levied pursuant to subsection (2) shall be due and payable on the passing of a resolution to that effect and in accordance with the terms of such resolution, **and may be recovered as a debt by the corporation in an action in any court of competent jurisdiction from the proprietor entitled at the time when such resolution was passed and from the proprietor entitled at the time when such was instituted, both jointly and severally. [Emphasis provided].**

[19] The Agreement for Sale, entered into by the Claimant, contained as Special Conditions, at paragraph 14;

“The Purchasers are specifically notified that the bye-laws contained in the Second Schedule of the Registration (Strata Titles) Act have been modified by the deletion therefore and the substitution therefore of the following bye-laws;

(iii) At the commencement of each calendar year the executive Committee shall:-

(a) Establish a fund for administrative expenses sufficient in the opinion of the Executive Committee for the control, management, administration, upkeep and maintenance of the common property, the payment of insurance premiums, electricity, water rates, property taxes, worker’s salaries and for the discharge of all of its other obligations for the ensuing calendar year;

(b) Determine the amount to be levied on each Proprietor as an annual contribution in the proportion which the unit entitlement of that proprietor’s Strata Lot bears to the annual fund and each proprietor shall within 30 days of notice of such assessment deliver to the Corporation 12 cheques in favour of the Corporation, each cheques dated the first of each calendar month for the ensuing year for an amount representing one-twelfth of the annual levy, failing which the entire amount of the annual levy shall become due and owing and may be collected from the Proprietor in default as a debt by suit or otherwise including but not limited to the discontinuance of common services provided by the Corporation, provided that:

(iv) the Executive Committee may make such rules and regulations as it may deem necessary or desirable from time to time in relation to the use, safety and cleanliness of the Common Property and the conduct of the occupants of the buildings and their

visitors and shall promptly notify each such Strata Proprietor of each such rule and regulation.

The Executive Committee is empowered by the bye-laws, registered with the National Land Agency on the 27th day of October 1980, to discontinue services such as electricity, water and gas being provided to the Claimant's apartment due to non-payment for same with respect to the provision of such services to the common area.

- [20] The gravamen of the Claimant's contention is that the **Registration (Strata Titles) Act** restricts the Defendant's ability to recover from any proprietor any contribution levied in accordance with the Act, by an action for debt in any court of competent jurisdiction. That the by-laws, which provide for the disconnection of the utilities, are inconsistent and repugnant to the **Registration (Strata Titles) Act**. It was further submitted that, the "*general law*", in Jamaica does not permit the recovery of any debt by disconnection of utility services. Counsel relied on **Powell v May** 1946 1 All E.R. 444 ; **Halsburys Laws of England** (4th ED) Vol. 44 Part 1001 and **Gentel v Rapps** (1902) 1KB160.
- [21] The proprietors of the strata lots upon registration of the strata plan, constituted a body corporate, with powers that allow for the recovery from any of its proprietors monies expended. The control, management, administration, use and enjoyment of the strata lots and common property are regulated by bye-laws. The bye-laws set forth in the First Schedule shall not be varied except by unanimous resolution. The bye-laws in the Second Schedule, may be amended or varied by the corporation.
- [22] The effect of the bye-laws on the corporation and the proprietor is spelt out in Section 9(8) of the **Registration (Strata Titles) Act**, that states;

"The bye-laws for the time being in force shall bind the corporation and the proprietors to the same extent as if such bye-laws had respectively been signed and sealed by the corporation and each proprietor and contained covenants on the part of the corporation with each proprietor and on the part of each proprietor with every other proprietor and with the corporation to observe and perform all the provisions of the bye-laws.

[23] The “general law” of Jamaica which governs the operation of electricity and water supply explicitly provides for the disconnection of these supplies if there has been non-payment of charges. Section 15 of **The Electric Lighting Act** of Jamaica states:

Power to cut off the supply of electricity:

“If any Local Authority, company or person, neglect to pay any charge for electricity, or any other sum due from them to the undertaker in respect of the supply of electricity to such Local Authority, company or person, the undertakers may cut off such supply, and for that purpose may cut or disconnect any electric line, or other work through which electricity may be supplied, and may, until such charge or other sum together with any expenses incurred by the undertakers in cutting off such supply of electricity as aforesaid are fully paid, but no longer, discontinue the supply of electricity to such Local Authority, company or person.”

Similarly, Section 24 of the **National Water Commission Act** of Jamaica states:

It shall be lawful for the Commission, on non-payment of any rate or any money payable under the provisions of this Act or any other enactment for the time being in force in relation to water supply services, to lock off the supply of water from any premises supplied with water by the Commission.

[24] Section 5 (2) of the **Registration (Strata Titles) Act**, is not exhaustive of the powers of the Corporation, but “shall include those listed from (a) to (d). Section 5(2) C) is for the recovery of debt from any proprietor, and allows the Corporation to sue the proprietor for a debt that was incurred for the provision of service by another entity, such as the supplier of electricity. The section allows for the recovery of the debt, even if it was not incurred by the proprietor, but by a tenant of the proprietor. The section allows a cause of action where none existed before. The section is not meant to repeal or amend the right of disconnection for non-payment for water supplied, as contained in Section 24 of **The National Water Commission Act**, or for the supply of electricity as prescribed, by Section 15 of the **Electric Lighting Act 1890**. As such, the bye-law providing for the disconnection of the electricity, water and gas is not repugnant to the general law of the land nor is it inconsistent with the main Act; Registration (Strata Titles) Act.

- [25] The construction that the Claimant's counsel urges on this Court, would exempt the proprietors of Strata lots, managed along the lines of the Defendant, from a sanction for non-payment for services provided. Although such a sanction would be applicable to the same proprietor, occupying lands not under the **Registration (Strata Titles) Act**, if he had similarly defaulted in his payments. The Committees of Strata Plans would be hobbled by the restriction placed on them in the management and control of the Strata Plans to the detriment of all the proprietors.
- [26] Further, the construction urged by the Claimant would lead to the absurdity, where a proprietor, who as here admits, that he is unable to meet his payments for a service, would nonetheless be availed of that service until an action in debt has been determined. If Parliament had meant to elevate the rights of the defaulting proprietor, it would do such an amendment directly and not by implication.
- [27] The proprietor would have signed an Agreement for Sale, which enshrines the right of disconnection for non-payment of electricity and water services. The result of non-payment in a strata plan is to put in peril all the services that the Corporation is empowered to deliver.
- [28] The conduct of the Claimant demonstrates an acceptance of the Corporation's power to disconnect these supplies. Having experienced financial difficulties in 2003, shortly after taking possession of the property she did not employ any of the procedures in the statute to raise a challenge to the state of affairs that existed from 2003.
- [29] The Claimant admits owing maintenance charges from November 2003 to date. However, there is nothing contained in the lease agreements or the bye-laws that would allow for the corporation to charge the proprietor for those services that have been disconnected. Consequently, the Claimant cannot be charged for a service she did not receive.
- [30] I find that, the disconnection by the Defendant of the water, electricity and gas supply, to the Claimant's apartment No. 11, 19 Seymour Avenue, Kingston 6, in the parish of St. Andrew in or around November 2003, was not unlawful. The disconnection of the electricity, water, and gas is not repugnant to the general law of Jamaica nor is it inconsistent with the main Act, the Registration (Strata Titles) Act. Additionally, the Claimant cannot be charged for services she did not receive and therefore I also find that for a period; November 2003 to the date hereof, during which the said services were disconnected from the Chambers of

the said apartment, there should have been no maintenance charges for those services.

[31] In light of all these circumstances, and the evidence brought before the court, the court orders that:

1. there be a reduction in the maintenance charges payable by the Defendant to reflect the non supply of the said services to the Claimant's apartment, for the said period;
2. the sum of \$493,830.35 offered to the Claimant remains; and
3. each party to bear its own costs.