



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2011HCV03085**

<b>BETWEEN</b>	<b>VINCENT GAYNAIR</b>	<b>FIRST CLAIMANT</b>
<b>AND</b>	<b>CHARLES ROSS</b>	<b>SECOND CLAIMANT</b>
<b>AND</b>	<b>NEVILLE HENRY</b>	<b>THIRD CLAIMANT</b>
<b>AND</b>	<b>NEGRIL BEACH CLUB LTD.</b>	<b>FIRST DEFENDANT</b>
<b>AND</b>	<b>NEGRIL INTERVAL OWNERSHIP CLUB</b>	<b>SECOND DEFENDANT</b>
<b>AND</b>	<b>RAZ OFER</b>	<b>THIRD DEFENDANT</b>
<b>AND</b>	<b>OFER HELFMAN</b>	<b>FOURTH DEFENDANT</b>
<b>AND</b>	<b>MARGARET CARSWELL</b>	<b>FIFTH DEFENDANT</b>
<b>AND</b>	<b>MICHAEL CAUSWELL</b>	<b>SIXTH DEFENDANT</b>
<b>AND</b>	<b>JULIAN EDWARDS</b>	<b>SEVENTH DEFENDANT</b>

Mr. Jerome Spencer instructed by Patterson, Mair, Hamilton for the claimants

Mr. Maurice Manning instructed by Mr. Weiden Daley of Hart, Muirhead, Fatta for the defendant

**Heard: July 15 and November 16, 2011**

**SIMMONS J (Ag.)**

[1] On the 4<sup>th</sup> May 2011 a claim was filed by the then claimant, Proprietors Strata Plan # 88 seeking the following declarations:

- i. That the purported emergency general meeting of the proprietors Strata Plan #88 held on April 2, 2011 was contrary to the law, its by-laws and is therefore illegal, null and void;
- ii. That any resolutions made at the purported general meeting of the proprietors Strata Plan #88 held on April 2, 2011 are null and void;
- iii. That the election of a purported executive committee at the meeting held on April 2, 2011 is null and void;

The claimant also sought an injunction to restrain the purported executive committee elected at the meeting held on April 2, 2011 from interfering with the operations of the claimant and its management office and with the activities of the duly elected and sitting executive committee.

The Fixed Date Claim Form was amended on May 16, 2011 to remove Proprietors Strata Plan #88 as the claimant and to substitute the present claimants. The third to fifth defendants were also added as parties to the claim.

[2] When the matter came up for hearing the claimant made an application for the question of whether the Extraordinary General Meeting (EGM) of the Proprietors Strata Plan # 88 (the Strata) held on

the 2<sup>nd</sup> April 2011 was contrary to law or the strata's by-laws to be heard as a preliminary issue. Counsel for the defendants opposed the hearing of the application.

[3] Mr. Spencer submitted that the application ought to be heard as its determination would possibly result in a resolution of the substantive matter. Mr. Manning objected to the hearing of the issue on the basis that under the Registration (Strata Titles) (Amendment) Act 2009 such issues are to be heard and determined by the Commission of Strata Corporations established by section 3 of the Registration (Strata Titles) Act (the Act). In support of this argument he referred to the case of ***Owners Strata Plan 30695 v Stratacorp*** 2005 NSWSC 405, in which the court declined to give the relief claimed on the basis that the applicant had failed to utilize the mechanism prescribed in the Strata Schemes Management Act. In that case McDougall, J., relied on *Harry M Miller Attractions Pty Ltd. v Actors and Announcers Equity Association of Australia* [1970] 1 NSWLR 614 at 615 in which Street, J. stated that it was a settled approach that injunctive relief would not ordinarily be granted where it could be seen that there was another tribunal suited to deal with the matter. Mr. Spencer stated that this issue was being raised for the first time despite the fact that it was the fourth time that the

matter was coming before the court. He also emphasized that this date was scheduled for the hearing of the matter. It was submitted that, the Act does not make it mandatory for persons to seek to resolve the matter at the level of the Commission before approaching the court.

[4] Having heard the submissions of Counsel I concluded that in circumstances where time had already been allocated for the hearing of the matter, the intent of the legislature would not be undermined by proceeding with the hearing. In addition, a determination of the preliminary issue could possibly resolve the matter. I therefore ruled that the hearing of the preliminary issue should proceed.

### **Facts**

[5] The corporation is comprised of twenty eight proprietors and of that number fourteen of them attended the EGM, three of whom were in arrears to the corporation. The third defendant Mr. Raz Ofer indicates at paragraph 19 of his affidavit sworn to on the 16<sup>th</sup> May 2011 that in February 2011 he sent a written request that an EGM be convened. The executive committee refused to honour that request on the basis that Mr. Ofer owed "significant contributions" to the corporation.

[6] On the 7<sup>th</sup> February, 2011 Mr. Ofer sent an email to the Property Manager of the strata Mr. Lindell Laing, Charles Ross, Bjorn Reynolds, Neville Henry, Enoch Stewart, Janet Wallace, Aquanova and Valerie McNeil. In that correspondence Mr. Ofer informed Mr. Laing that the majority shareholders had the right to call an EGM whether or not there was any "money dispute". It was also stated that the money had been paid and that a proprietor who holds 25% of the units can call an EGM. He then requested that the notices be mailed on that day.

[7] This was followed by another email sent on the same day in which Mr. Ofer informed Mr. Laing that he had received legal advice that the issue of outstanding maintenance did not prevent an owner with 25% shares from calling for an EGM to be held but only affected their voting rights. He then stated ***"Mr. Laing – Please proceed and send a letter to all shareholders informing them the EGM will take place on Saturday, 26<sup>th</sup> March 2011, at 11 AM, at the conference room of Negril Beach Club, Negril."***

[8] On the 17<sup>th</sup> February 2011 at 1:01 p.m. Mr. Laing sent an email to Charles Ross, Neville Henry, Bjorn Reynolds, Enoch Stewart, Janet Wallace, Valerie McNeil, Aquanova and Vincent Gaynair attaching a

copy of the notice of the EGM scheduled to be held on the 2<sup>nd</sup> April 2011.

[9] This was followed by another email from Mr. Laing at 1:17 p.m. addressed to Aquanova, Bjorn Reynolds, Charles Ross, Enoch Stewart, Janet Wallace, Jean Gaynair, Milverton Reynolds, Neville Henry, Ofer Helfman, Raz Ofer and Valerie McNeil and copied to seventeen other proprietors informing them that the EGM would be held on the 2<sup>nd</sup> April 2011 at 11:00 a.m. The notice which bears Mr. Laing's name and the Form of Proxy were attached to this email.

[10] On the 17<sup>th</sup> March 2011 at 3:26 p.m. Mr. Laing sent a letter to the proprietors by email informing them that on the 2<sup>nd</sup> March 2011 the executive committee met and that as a result the EGM was cancelled.

[11] At 3:59 p.m. that day Mr. Ofer sent an email to the owners informing them that the arrears of maintenance which the executive committee was concerned about related to the lobby and not to any of the units for which he was responsible. He also stated that arrears only affected the right of an owner to vote at the EGM and that no one had the right to cancel the EGM and that it would "go ahead".

[12] The EGM was held and a new executive committee was elected.

## **The issues**

[13] In order for the court to determine whether the meeting was contrary to law or the by-laws of the corporation, four issues need to be resolved. They are:

- i. Whether the third defendant could properly request the convening of an extraordinary general meeting;
- ii. Whether the email sent by the third defendant on the 17<sup>th</sup> March 2011 amounted to a reissue of the notice convening the meeting;
- iii. How is a quorum to be determined ?; and
- iv. Whether there was a quorum present at the EGM.

## **Submissions**

[14] Mr. Spencer submitted that the EGM was ultra vires as it was not convened by the executive committee but by Mr. Ofer who had no power to do so. He directed the court's attention to Section 9 of the Act which states that the management, administration, use and enjoyment of strata lots and the common property are governed by its by-laws. Those by-laws are contained in the first and second schedules of the Act.

[15] Specific reference was made to by-laws 7 which deals with the convening of an EGM by the corporation and 13 which confers on the executive committee the power to perform the duties of the corporation. Counsel asserted that the meeting was not called by the corporation as stipulated in the by-laws but by Mr. Ofer. He referred to the case of **Re State of Wyoming Syndicate** [1901] 2 Ch 431 in support of his position that the meeting was improperly convened. In that case, which was decided under the UK Companies Act of 1892, an extraordinary general meeting was convened by the secretary without the requisite approval of the board of directors. It was held that the resolution passed at the meeting was not valid as the secretary could not act on his own authority.

[16] In addition Counsel submitted that there was no provision in the Act which permits persons who requisition a meeting to convene one if their request is not honoured.

[17] Mr. Spencer made reference to the affidavit evidence which indicates that on February 17, 2011 the notice of the EGM was sent out by Mr. Laing and subsequently withdrawn by him on the instructions of the executive committee. It was argued that Mr. Ofer by his email dated the



17<sup>th</sup> March 2011 purported to re-issue the notice to the proprietors convening the EGM when he had no authority to do so.

[18] Mr. Manning in response asked the court to find that the EGM was convened by Mr. Laing and that he had the authority to do so. Whilst he agreed that the corporation is the body that is vested with the authority to convene meetings he submitted that by-law 21 permits the executive committee to employ servants or agents to assist in the administration of the strata. Mr. Lindell Laing, the property manager was stated to be such an individual. He urged the court to find that the EGM was convened by Mr. Laing and that he was authorized to do such acts by the committee. It was further submitted, that upon receipt of Mr. Ofer's written request for the EGM to be convened Mr. Laing, in accordance with the authority conferred on him by the executive committee and in accordance with by-law 7 sent out the required notice to the proprietors. In this regard, it was submitted that the facts in this case can be distinguished from those in ***Owners Strata Plan 30695 v. Stratacorp*** where the court found that there was no evidence that the owners had requested a meeting. Counsel also stated that Mr. Laing's authority to call the EGM was never in issue. Mr. Laing's letter of March 17, 2011, it was submitted, only

revealed a challenge of Mr. Ofer's right to request the meeting in light of his alleged financial standing with the strata.

[19] Mr. Manning also submitted that by-law 7 does not stipulate that the proprietor who requests the meeting be fully paid up in respect of maintenance charges.

[20] With respect to the issue of the withdrawal of the notice by Mr. Laing, it was argued that the corporation was obliged to hold the EGM as there was no power given in the by-laws to revoke the notice. The corporation, according to counsel could only postpone or adjourn the EGM to another date once the notice was issued.

[21] Counsel also sought to distinguish the **Wyoming** case on the basis that the secretary who issued the notice had no authority to do so. It was also submitted that company law is not applicable to a strata corporation where the owners constitute the corporation.

[22] Mr. Spencer submitted that there was no valid quorum at the EGM as only eleven of the fourteen persons present were eligible to vote. In this regard, Counsel referred to by-law 10 which stipulates that a quorum is required in order to transact business at any general meeting of the strata. One half of the persons entitled to vote are required to be present

in person or by proxy. He argued that this requirement was not met as the only persons who are entitled to vote are those who do not owe any contributions in respect of their strata lots. Mr. Spencer asserted that in these circumstances where the strata is comprised of twenty-eight proprietors, fourteen would constitute a quorum. It was argued that since, according to the defendants, only eleven of them were eligible to vote at the meeting any decisions taken were invalid. Reference was made to the case of ***Re Greymouth-Point Elizabeth Rly and Coal Co Ltd v. Greymouth-Point Elizabeth Railway and Coal Co Ltd*** [1904] 1 Ch 32 in support of this point. In that case, resolutions passed at a directors meeting were held to be invalid on the basis that there was no valid quorum.

[23] Mr. Manning on behalf of the defendants submitted that by virtue of section 15 of the Act every strata lot carries a vote. That section makes provision for voting where the proprietor is an infant or is unable to control his property and confers on the court the power to appoint a fit and proper person to exercise a proprietor's right to vote in the event that there is no person able to vote in respect of a strata lot. He stressed the point that inherent in owning a strata lot is the right to vote. Mr. Manning indicated that the third defendant owns one hundred and two

lots which represent 68.5% of the total units and that the maintenance was fully paid in respect of most of those lots. He submitted that in circumstances where there is an amount due in respect of one or two of those lots the proprietor should not be barred from voting. Such action he stated would be contrary to the tenor of the Act and also be unjust. He cited **paragraph 1442** of **Halsbury's Laws of England, volume 44(1)** which states:

*"It is a principle of legal policy that law should be just and fair, and the courts decisions should further the ends of justice. The court when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. The court should therefore strive to avoid adopting a construction that leads to injustice or unfairness".*

[24] He also referred to the Gaynairs as an example of proprietors who own at least two lots and submitted that it would be unfair to bar them from voting if the maintenance charges for one lot are in arrears. He argued that in such a case the proprietor should still be counted as being part of a quorum based on his eligibility to vote in respect of one unit. Mr. Manning stated that a reading of the Act does not lead to the

restrictive interpretation being ascribed to it be Mr. Spencer. He submitted that a quorum would be constituted by the individual strata units as represented at any meeting as each lot is entitled to a vote.

[25] Mr. Spencer in his response stated that **paragraph 1442** of **Halsburys Laws of England** to which Mr. Manning had referred only applies to a situation in which the court was being asked to interpret legislation, which may be capable of having more than one meaning. He submitted that in this case section 15 of the Act and by-law 30 were not in conflict. Therefore there was no need to depart from the ordinary meaning of the legislation.

### **The Law**

[26] By virtue of section 4 of the Act, all of the proprietors of lots contained in a strata plan comprise the corporation once that strata plan has been registered. Section 9 of the Act states that the "control, management, administration use and enjoyment of the strata lots and the common property" are regulated by the by-laws which are contained in the First and Second Schedules to the Act. These by-laws, by virtue of subsection 3 remain in effect until the corporation makes its own by-laws. No by-laws have been made by this strata corporation. Therefore

those contained in the first and second schedules of the Act are applicable.

[27] By-law 13 provides for an executive committee. That committee once established, exercises and performs the duties of the corporation. By-law 21 gives the committee the authority to employ agents or servants to assist with the *“control, management and administration of the common property and the exercise and performance of the powers and duties”* of the corporation.

[28] It has not been disputed that Mr. Lindell Laing was a servant or agent of the executive committee and had the authority to issue notices in relation to meetings. I have noted that his name appears on the notice of the EGM. The claimants have not filed any affidavit in which it has been stated that Mr. Laing did not send the email to which the notice was attached and that if he sent it, that he had no authority to convene the meeting as an agent of the executive committee. It has only been alleged that Mr. Ofer caused the said notice to be published in a newspaper.

[29] The issue of whether the EGM was properly convened is dependent on the resolution of two questions. Firstly, whether a proprietor who

owns twenty-five per cent of the total number of units but owes maintenance in respect of one or more of those units is precluded from requesting that an EGM be convened by the corporation. Secondly, whether the executive committee had the authority to cancel the EGM after the notice convening same had been issued and served.

### **Convening of the EGM**

[30] By-law 7 states:-

*“The corporation may whenever it thinks fit and **shall** upon a requisition in writing made by proprietors entitled to **twenty-five per centum of the total unit entitlement of the strata lots convene an extraordinary general meeting.”***

This by-law places an obligation on the strata corporation to convene an extraordinary general meeting once it is requested by a proprietor or proprietors who own twenty five percent of the total units. It has not been disputed that a written requisition was made by Mr. Raz Ofer who by virtue of his shareholdings in the first and second defendants owned at least twenty-five percent of the total units which comprise the strata.

[31] However, it has been alleged that Mr. Ofer owed maintenance fees in relation to some of the units that he owns and that as a result he did not have the right to request an EGM. By-law 7 unlike by-laws 10 and 30 does not contain any words of limitation linked to the entitlement of a proprietor to vote. By-law 10 states as follows:

*“Save as in these by-laws otherwise provided, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present **at the time when the meeting proceeds to business**. One-half of the persons entitled to vote present in person or by proxy shall constitute a quorum.”*

By-law 30 reads:

*“Except in cases where by or under the Act a unanimous resolution is required, no proprietor shall be entitled to vote at any general meeting unless all contributions payable in respect of his strata lot have been duly paid.”*

The effect of these two latter mentioned by-laws is that in order for there to be a quorum, one-half of the proprietors who are paid up in respect of their



strata lot must be present. In by-law 30, the right to vote is expressly linked to the paid up status of a proprietor's account.

[32] By-law 7 in my view recognizes that a proprietor a number of them with significant holdings may request the convening of an EGM. The legislature prescribed the minimum requirement for this to be done. The issue of whether or not they are eligible to vote at such meeting is entirely separate from their right to call for it to be convened. A proprietor's entitlement to vote according to by-law 10 is determined after the meeting has been convened.

[33] I have accepted the submissions of counsel for the defendants on this issue. It is therefore my finding that Mr. Ofer was entitled to request that an EGM be convened.

### **Notice of the EGM**

[34] The effect of the issue of the notice of the EGM dated the 17<sup>th</sup> February 2011 must now be considered. As was stated previously, there appears to be no dispute that Mr. Laing had the authority to issue notices in respect of meetings. By-law 13 makes it clear that the corporation which is comprised of all proprietors acts through its

executive committee. The committee in exercise of its powers under by-law 21 employed Mr. Laing as its Property Manager.

[35] Mr. Vincent Gaynair states at paragraph 17 of his affidavit dated the 3<sup>rd</sup> May 2011 that the notice convening the EGM was placed in a newspaper by Mr. Ofer. Mr. Ofer does not deny this and he was not cross examined on that issue. The notice of the EGM which bears the name of Mr. Laing is exhibited to the affidavit of Vincent Gaynair. That notice is a replica of that which was served by email on the proprietors of the strata. The email appears to have originated from the strata's email address and in the absence of any evidence to the contrary, it appears to have been sent by Mr. Laing.

[36] Mr. Laing's authority to issue the notice has not been challenged and there is no dispute regarding the origin of the notice which was sent by email. I therefore find that the notice of the EGM was issued by Mr. Laing. It is my view nothing turns on who caused the notice to be published in the newspaper.

### **Whether the committee had the authority to cancel the meeting**

[37] On the 17<sup>th</sup> March 2011 Mr. Laing sent a letter by email to the

proprietors purporting to cancel the EGM. It reads:

*"Dear Owners,*

*At the Executive Committee Meeting held on 2 March 2011 with the Strata(sic) Lawyer Mr. Green and Mr. Ofer (sic) Lawyer Ms. Long as a result of the meeting I was informed by the Executive Committee, that in regards to the large amount of maintenance fees owed by Mariner's Negril Beach Club for over three (3) months as per their requested(sic) there will be no Extra-Ordinary general meeting on the 2 April 2011; Instead as soon as the final Audited Report is ready the date for the Annual General Meeting will be set by the Executive Committee..."*

[38] The by-laws of the strata make no provision for the cancellation of meetings. I have also noted that section 4 (3) of the Act makes it clear that the provisions of any enactment which deals with the incorporation, regulation and winding-up of companies are not applicable to strata corporations. However, I do believe that decisions of the court in relation to companies may be of some guidance as to the principles that may be applied in certain circumstances. In that regard I have found the case of **Smith v. Paringa Mines Limited** [1906] 2 Ch. 1933 to be of some assistance. In that case, a notice postponing a general meeting was sent by the secretary of the company after notice of the meeting was issued. The articles of the company had no provision for the postponement of a general meeting. On the same day, the claimant

wrote to the secretary informing him that he had been advised that the postponement was illegal and that the meeting would proceed. The claimant also published a notice to this effect. The meeting took place and resolutions were passed re-electing the claimant as a director and refusing to appoint another director. The meeting was then adjourned to the date of the postponed meeting. The court held that once the notice convening the meeting was duly issued by the authority of the board and was given at the proper time and to every shareholder, the board in the absence of express provision in the articles could not postpone the meeting. In that case, Kekewich, J. was of the view that if directors had that power, they could postpone a meeting which may be adverse to them for "*a week or a month, or perhaps sine die*".

[39] In this matter, the notice was issued by Mr. Laing who was authorized to do so and was served within the required time frame. The by-laws of the strata speak to the convening of meetings and not to their cancellation. This is not unlike the situation in ***Smith v. Paringa Mines Limited***.

[40] It is therefore, my view having heard the submissions of counsel that once the notice convening the EGM had been issued and served, the committee had no authority to cancel that meeting. The notice sent by

Mr. Laing convening the meeting was therefore still in effect and the meeting could properly proceed.

**Whether the email sent by the third defendant amounted to a re-issue of the Notice of the EGM**

[41] On the 17<sup>th</sup> March 2011 having received the email from Mr. Laing advising proprietors that the EGM was cancelled, Mr. Ofer sent an email to them indicating that the issue of arrears only affected a proprietor's right to vote and did not prevent that individual from requesting a meeting. It read as follows:

*"Dear Owners,*

*Our lawyer, Tracey Long, was about to send a letter to all owners regarding the outstanding maintenance charges.*

*Mariners only owes maintenance charges for the lobby, not for any of the rooms it owns, for reasons to be explained by our lawyer.*

*If an owner owes maintenance fees, then he can't vote at the EGM only for the units that maintenance charges are owed. Again Mariners delayed paying maintenance fees only for the lobby, for a lengthy period of time, due to reasons to be explained by our lawyer.*

*No one has a legal right to cancel the EGM and the EGM will go ahead, in accordance with the Strata's by laws. If an owner don't (sic) appear to the EGM, they lose their right to vote at the EGM.....*

*Again, the EGM will go ahead as schedule (sic) and we urge all owners to attend."*

[42] Did this email amount to his reissuing of the notice convening the EGM? I am not convinced that it does. It seems to be an expression of Mr. Ofer's opinion that the executive committee had no power to cancel the EGM and certainly not for the reason stated. It also expressed his belief that in those circumstances the meeting should proceed as scheduled. At no time has it been alleged that Mr. Ofer had the authority to issue notices on behalf of the executive committee.

[43] In any event, the decision in ***Smith v. Paringa*** is also relevant to this issue. In that case the claimant went as far as to publish a notice in the Financial Times that the general meeting would be held. In this matter the notice which was published bore the name of Mr. Lindell Laing and it is only alleged that Mr. Ofer caused its publication.

[44] I therefore find that the email sent by Mr. Ofer did not amount to a reissue of the notice of the EGM.

### **How is a quorum determined?**

[45] A quorum is the minimum number of persons which constitutes a valid meeting. Generally, a meeting is the coming together of more than one person and it was held in the case of ***Re Sanitary Carbon*** [1877]

W.N. 223 that even where that one person holds a proxy for three others no meeting had been convened.

[46] The by-laws state that a quorum is one-half of the persons entitled to vote. Those persons must either be physically present or be represented by way of proxy. A person can either be a natural person as in the case of a human being or an artificial one as in the case of a company. Mr. Manning argued that the amount of persons present is to be calculated by reference to their unit entitlement. If that argument is followed to its logical conclusion, one person who owns one half or more of the total units in the strata could constitute a quorum. Such a result could not have been the intent of the legislature. I have therefore accepted the submissions of Mr. Spencer on this point that the word person is to be given its natural and ordinary meaning and is not dependent on an individual's unit entitlement

### **Whether there was a quorum present at the EGM**

[47] By-law 30 makes it clear in the absence of a quorum of persons entitled to vote no business is to be done. This in effect means that no decisions can be validly taken at such a meeting. It is to be noted that the determination as to whether there is in fact such a quorum is to be

made at the time when the meeting proceeds. Therefore, a proprietor in order to be counted may settle his account at any time before the commencement of the meeting.

[48] In this matter twenty-eight (28) proprietors comprise the strata. If they were all paid up at the date of the EGM fourteen (14) of them would constitute a quorum of persons entitled to vote. In order to determine whether or not there was such a quorum on the 2<sup>nd</sup> April 2011 it must therefore be ascertained how many of them were fully paid up.

[49] Where a proprietor owns more than one unit, the status of the account for each unit would also be relevant. His indebtedness in relation to one unit should not be a bar to that proprietor being counted as part of the quorum in relation to his paid up units.

[50] Unfortunately, the court has not been provided with sufficient information pertaining to the status of the accounts in respect of the twenty-eight proprietors of the strata.

[51] In an effort to satisfy the court that the requirement for a quorum was satisfied, Mr. Manning raised the issue that in this matter, voting was by poll. This means that votes were counted in accordance with the unit entitlement of each proprietor who was present. This does not in my



view change the method by which a quorum is to be determined. By-law 27 deals with voting. On a show of hands each proprietor has one vote. On a poll, the votes are counted in accordance with the unit entitlement of each person who is present. This does not mean that for the purpose of establishing whether or not the requirement for a quorum has been met, persons are to be counted in accordance with their unit entitlement.

[52] In the absence of the relevant information I am unable to make a ruling on whether there was a quorum at the EGM.

[53] In conclusion, my findings are as follows:

- i. The third defendant, Mr. Ofer was entitled to request that the EGM be convened;
- ii. The Notice of the EGM was issued by Mr. Laing;
- iii. The executive committee did not have the power to cancel the EGM;
- iv. The email sent by Mr. Ofer did not amount to a reissued Notice convening the EGM; and
- v. The number of persons which would have constituted a quorum at the EGM is to be determined by the reference

to the number of them who were fully paid up in respect of the strata lots owned by them at the commencement of the meeting.