



Hilary Term
[2025] UKPC 16
Privy Council Appeal No 0119 of 2023

JUDGMENT

**Wallace I Rolle and another (Appellants) v Town
Court Management Co (Respondent) (Bahamas)**

**From the Court of Appeal of the Commonwealth of
The Bahamas**

before

**Lord Hodge
Lord Hamblen
Lord Leggatt
Lord Burrows
Lord Stephens**

**JUDGMENT GIVEN ON
3 April 2025**

Heard on 12 March 2025

Appellant

Krystal D Rolle KC

Darron B Cash

(Instructed by Rolle and Rolle, Nassau)

Respondent

Kahlil D Parker KC

Roberta W Quant

(Instructed by Cedric L Parker & Co, Nassau)

LORD LEGGATT:

Introduction

1. In 2001 the appellants, Wallace I Rolle and Krystal D Rolle, purchased a condominium unit in the Town Court Condominium, a property comprising 65 units located on Nassau Street, New Providence, The Bahamas. It was never the appellants' intention to live there themselves. They acquired the unit to let to tenants for the purpose of generating rental income. The appellants enjoyed such rental income in the following years without the inconvenience of having their profits reduced by contributions to the common expenses of the property. This was because the appellants refused to pay such contributions. They asserted that they had no legal obligation to do so.

2. That might seem an improbable, if not reprehensible, position to adopt. But, as the appellants informed the court in their opening written submissions at the trial, they are both lawyers and "as Counsel and Attorneys at law have legal knowledge which the other unit owners may not possess". That legal knowledge led them to conclude that the owners of the condominium units had no power to delegate their duties to manage, maintain and operate the property to a managing agent. The agreement by which a managing agent had been appointed was accordingly (in the pleonastic phrase that some lawyers like to use) "null, void and of no legal effect". So too, therefore, was every act done by the managing agent pursuant to that agreement, including every demand made on the appellants for payment of contributions to the costs of maintaining and insuring the building and other common expenses. Hence nothing was legally due from the appellants. For good measure, the appellants gave as a further reason why the agreement with the managing agent was a nullity the fact that the unit owners as a body (the respondent to this appeal) were misdescribed in the agreement as "Town Court Condominium Association", when they should have been described as "the Town Court Management Company" (as explained below). Points based on misnomers in statements of account issued to the appellants were also taken.

The proceedings

3. The appellants began this action against the respondent in January 2005. They asked the court to declare that the demands made on them for contributions to the common expenses of the property were invalid for the reasons mentioned above. What is more, they said that it was in fact the respondent who owed money to them. They averred that the respondent, although on their case precluded from using a managing agent to perform this duty, had a duty to keep the common property in good repair, of which it was in breach. This had resulted in a leak of water into the appellants' unit from the floor above which the appellants had paid a plumber to fix at a cost of \$5,946. The appellants also alleged that they had had difficulties in finding and retaining tenants because of the poor

state of repair of the property, depriving them of rental income. They claimed that the respondent was liable to compensate them by paying damages for these losses.

4. The respondent contested the claim and counterclaimed for the contributions to common expenses which, on its case, the appellants had unlawfully withheld. When the defence and counterclaim was originally prepared in October 2014, the outstanding amount claimed by the respondent was \$118,658. By October 2019 it had increased to \$222,302.

5. Why the action took 16 years to come to trial, in February 2021, has not been explained. Certainly, the delay did not advantage the other unit owners, who throughout this time were compelled to fund the appellants' share as well as their own shares of the common expenses. Lest it be thought that they were seeking to avoid their financial responsibilities, the appellants emphasised in their submissions at the trial that it was only the costs of employing the managing agent to which they were in principle unwilling to contribute. They accepted that they would be liable to pay contributions to the common expenses if valid demands for such contributions were made by the respondent that did not include the managing agent's fees. This acceptance, however, has never been reflected in any actual payment of money by the appellants. They say that this is because they do not know the exact amounts referable to the managing agent's fees and, until they do, they are entitled to pay nothing at all.

6. After the trial, it was another year before judgment was delivered. In that judgment, dated 8 April 2022, Winder J upheld the appellants' claim for the repair costs of \$5,946 and loss of rental income (which he assessed in the amount of \$20,000). But he rejected their other claims, finding that the appointment of the managing agent was valid and that demands for contributions issued by the managing agent were therefore also valid. The judge accepted that there were some discrepancies in the accounting information provided by the respondent and directed the respondent to make a proper accounting of the charges levied on the appellants in the relevant period. He said that upon the provision of the accounting the appellants "will be required to make payment thereon". He invited the parties to agree the terms of an order, failing which the judge said that he would settle it himself. The Board has been told that this was, however, never done.

7. An appeal by the appellants to the Court of Appeal (Isaacs, Crane-Scott and Jones JJA) was unanimously dismissed. Undaunted, the appellants have exercised their right (applicable whenever the amount sought to be recovered by any party is not less than \$4,000) to bring a further appeal to the Privy Council. On this appeal, as in the courts below, Ms Krystal Rolle KC has appeared purportedly as counsel for the appellants - although, as she is herself an appellant, the Board considers that her status is properly that of a litigant in person. The arguments addressed to the Board showed that the judgments below were not altogether wasted, as Ms Rolle in her oral submissions did not pursue a ground of appeal based on misdescriptions of the respondent. Save for a point about

interest, the only issue which the Board is required to decide is whether, as a matter of law, the respondent has the power to delegate its functions of managing, maintaining and operating the Town Court Condominium to a managing agent.

The power to delegate

8. As Ms Rolle correctly submitted, this issue is one of construction of three instruments which together constitute the legal regime governing the Town Court Condominium. These governing instruments are: (1) the Law of Property and Conveyancing (Condominium) Act (“the Act”); (2) byelaws which regulate the operation of the property; and (3) the Declaration, made on 8 October 1979, by which the property was subjected to the provisions of the Act.

9. Section 13 of the Act states (so far as relevant):

“(1) The operation of the property shall be vested in a body corporate constituted in the manner provided by this section and such body corporate shall have the powers and duties prescribed by this Act and the relevant byelaws.

(2) ... as from the date of the recording of a Declaration all the owners from time to time of the units in the property to which the Declaration relates shall constitute a body corporate by virtue of this Act under such style and title as is prescribed in the Declaration.”

10. Section 14 provides that the duties and powers of the body corporate shall include the duties and powers specified in that section. The powers specified in section 14 include powers to levy contributions on unit owners of the body corporate, to employ such staff as the body corporate deems necessary to carry out its duties, and by section 14(2)(g):

“to exercise any other powers as may be conferred upon the body corporate by the Declaration or the byelaws.”

11. Section 18(1) provides that “[a]ny contribution levied by the body corporate on any unit owner shall be due and payable by the unit owner seven clear days after the service of a notice in writing of the levying of such contribution”.

12. A Schedule to the Act sets out a standard set of byelaws which, by reason of section 15(4), apply unless the Declaration relating to the property specifically provides otherwise. In this case no relevant alteration was made to these standard byelaws.

13. The Declaration relating to the Town Court Condominium, by clause 15, constituted the unit owners as the body corporate by virtue of the Act, and with the powers and duties prescribed by the Act, under the style and title of “the Town Court Management Company” (ie the name of the respondent).

14. Clause 17 of the Declaration provides that the respondent shall have certain powers which include “the power to delegate all or any of its powers and duties to any company firm or person of its choice”.

15. Viewed overall, it is apparent that the governing instruments are intended to facilitate the effective operation of multi-unit condominium buildings by (among other things) bestowing on the unit owners as a corporate body extensive powers of management of the common property and giving the unit owners a broad freedom to exercise those powers in whatever manner they consider to be for their collective benefit.

16. To see that under the governing instruments the respondent has the power to delegate its powers and duties to a managing agent requires no great legal expertise. It requires only the ability to read together two of the provisions mentioned above. They are section 14(2)(g) of the Act, which expressly authorises the respondent to exercise “any other powers as may be conferred upon [it] by the Declaration or the byelaws”, and clause 17 of the Declaration, which expressly confers on the respondent the “power to delegate all or any of its powers and duties to any company firm or person of its choice.” The clear and unambiguous effect of those provisions is to give the respondent the power to delegate all or any of its powers and duties to a managing agent (or any other person of its choice). The appellants’ attempt to deny the legal validity of the agreement by which the managing agent was appointed, and the acts done under that agreement, is therefore entirely misconceived.

17. No one could reasonably doubt what clause 17 of the Declaration means. But Ms Rolle endeavoured to argue that clause 17 is “null and void as being ultra vires the Act and the byelaws”. In so asserting Ms Rolle relied on section 4(1) of the Act which provides that a Declaration shall contain certain particulars including (see section 4(1)(k)) “any other matters (not inconsistent with the provisions of this Act) in connection with the property which the person or persons executing the Declaration may deem desirable to prescribe”. Ms Rolle submits that there is such inconsistency between clause 17 of the Declaration relating to the Town Court Condominium and the provisions of the Act. For that contention to be taken seriously, it would be necessary to point to a provision of the Act (or possibly the byelaws) which qualifies or limits section 14(2)(g) of the Act and

prevents the Declaration from conferring on the respondent, as it seeks to do, the power to delegate all or any of its powers and duties to any company, firm or person of its choice. When invited at the hearing of the appeal to identify any such provision with which clause 17 is allegedly inconsistent, Ms Rolle alighted on three.

18. In the Act, Ms Rolle relied first on section 13(1), quoted at para 9 above. Far from being inconsistent with a power to delegate, however, section 13(1) is inconsistent with the appellants' case. It provides that the body corporate (ie the respondent) "shall have the powers and duties prescribed by this Act". The powers prescribed by section 14(2) of the Act expressly include the powers conferred by the Declaration, which expressly include the power to delegate conferred by clause 17.

19. Ms Rolle also relied on section 27 of the Act, although the relevance of this provision seems to have escaped the appellants when preparing their written case for this appeal as it was not mentioned there. Section 27 gives the Supreme Court a discretionary power to appoint an administrator for the operation of the property on cause shown, on the application of the body corporate, or any judgment creditor of the body corporate, or any person having an interest in any unit. Section 27(3) states that the administrator:

"shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the court shall order and the administrator ... may delegate any of the powers so vested in him ..."

20. The Board understands the suggestion made to be that because, where any powers of management are vested by the court in an administrator, section 27(3) expressly authorises the administrator to delegate any of those powers, this somehow means that the body corporate, when exercising its powers of management itself, does not have any power to delegate. That suggestion is wholly illogical. There is no inconsistency between an administrator appointed by the court having a power to delegate and the body corporate having such a power. The only difference in how the two cases are dealt with is that, in the case of the administrator, the Act gives an automatic power to delegate, whereas, in the case of the body corporate, the Act makes the existence of a power to delegate dependent on whether the Declaration confers such a power. The difference is immaterial here, as the Declaration for the Town Court Condominium does confer such a power to delegate on the respondent.

21. Turning to the byelaws, Ms Rolle relied on byelaw 1(6). This is another provision not featured in the appellants' written case but to which resort was had at the hearing. The resort was ineffectual as it is irrelevant to the issue in the appeal. Byelaw 1(1) states that:

“The powers and duties of the body corporate shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the Board of the body corporate.”

The remaining provisions of byelaw 1 deal with the composition, appointment and removal of members of the Board and include:

“(6) The Board may appoint persons who are unit owners (whether or not members of the Board) to hold such offices and to perform such functions as the Board may from time to time determine.”

22. Ms Rolle submitted that byelaw 1(6) gives the body corporate power to appoint persons to perform any functions, but only on condition that they are unit owners. She submitted that this is inconsistent with a power of delegation to any outside person. The fallacy of this submission is that byelaw 1(6) is not dealing with the powers of the body corporate. It is concerned with its internal management and in that regard gives a power of appointment to the Board. It says nothing about what the powers and duties of the body corporate are and whether they include a power to delegate any of its powers and duties to any outside company, firm or person. Clause 17 of the Declaration, read with section 14(2)(g) of the Act, expressly confers such a power. Once again, no inconsistency is, even arguably, shown.

23. Ms Rolle also referred to section 40 of the Interpretation and General Clauses Act of the Bahamas and the decision of Northern Ireland Court of Appeal in the case of *Mckee v Charity Commission for Northern Ireland* [2020] NICA 13 for the proposition that powers or duties conferred by statute on a designated body are only delegable if the statute expressly or by necessary implication confers a power of delegation. The Board does not understand that proposition to have been disputed. The respondent’s simple point is that the statute which governs here, taken with the Declaration, does expressly confer a power of delegation.

24. Despite the forcefulness with which the arguments in support of the main ground of the appeal were advanced, they did not withstand the slightest scrutiny. The Board therefore did not find it necessary to call on counsel for the respondent to reply to them. The appellants’ assertion that the respondent did not have power to appoint a managing agent, and further assertions of legal invalidity based on that premise, are directly contrary to the clear wording of the governing instruments. It follows that, in failing and refusing to pay the managing agent’s fees, let alone the other elements of the contributions levied by the respondent, the appellants have been acting unlawfully for the past 25 years, in manifest breach of their obligations under section 18 of the Act.

Interest

25. The ground of appeal concerning interest is that the judge did not consider or determine the appellants' claim for pre-judgment interest on the damages awarded to them. The Court of Appeal rejected that criticism, holding that, as the award of interest is discretionary, the fact that the judge did not award it was not an error. The appellants object that there is nothing to indicate that the judge actually exercised the relevant discretion and the absence of any mention of interest in the judgment is likely to have been an oversight. If that is right, then the appellants have only themselves to blame, as they should have raised the question of interest after the judgment was handed down in the process of formulating an appropriate order. It is commonplace for matters consequential on the substantive decision, such as interest and costs, to be dealt with at that stage and referred to the judge if they cannot be agreed between the parties. Having ignored the judge's express invitation to seek to agree the terms of the order in this case, the appellants are not in a position to complain that no order has been made which included provision for interest.

26. Had the question been raised following the judgment, the Board cannot conceive that an order for payment of pre-judgment interest would have been made in favour of one party but not the other. If interest were to be awarded pursuant to section 3 of the Civil Procedure (Award of Interest) Act on the damages payable to the appellants, it ought in justice equally to be awarded at an equivalent rate on the outstanding debt owed by the appellants to the respondent. That debt far exceeds the amount of the appellants' damages. Interest on the debt would therefore likewise far exceed any interest awarded to the appellants on their damages. As it would be unjust to award interest to the appellants without also awarding interest to the respondent (which would be greatly to the appellants' disadvantage), the Board considers that it ought not to disturb the current position on this second appeal.

Conclusion

27. The Board will humbly advise His Majesty to dismiss the appeal.

28. In doing so the members of the Board also wish to record their dismay that the appellants have withheld a substantial sum of money due to the respondent for an inordinate period of time (25 years since the arrears began to accrue) on grounds which were so wholly without legal substance. Had the assertions of legal invalidity made on this appeal, as well as in two courts below, not been made and maintained by lawyers unwise enough to act in their own cause, the Board would not have thought them capable of being argued. To reflect its opinion of their conduct, the Board proposes to direct that the appellants must pay the respondent's costs of the appeal and of the proceedings in the courts below, to be assessed on the indemnity basis, unless the appellants show good

reason why such an order should not be made in written submissions filed within 21 days of the date of promulgation of this judgment.