

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(PORT OF SPAIN)**

CLAIM NO. CV2010-05055

**In the Matter of Part 68 of The Civil Proceedings Rules 1998 (Amended 1999)  
And**

**In the Matter of ALL THAT flat forming part of the Claimant's property and being one of the flats and known as Flat No. 28 Farrell Apartments which said flat is delineated and shown numbered 28 in a circle and marked "28" on the General Plan of the building development on the property prepared by Leslie E. Akum Lum, licensed surveyor, dated 3<sup>rd</sup> January 1977 together with all sewers, drains, pipes, wires, ducts, and conduits used solely for the purpose of the said flat but no others and including one half part severed vertically horizontally or otherwise as the case may require of all such walls, floors and ceilings as are external to such flat including those of any porch whether covered or uncovered except and reserving from the demise the main structural parts of the building of which the flat forms part including the roofs, foundations and external parts thereof and which said flat stands on All and Singular that certain piece or parcel of land situate in the Ward of Tacarigua in the County of St. George in the Island of Trinidad comprising one acre two roods be the same more or less delineated and more particularly described and with the abuttal's and boundaries thereof shown in the plan or diagram drawn on deed of lease registered as No. 1891 of 1953 and therein coloured pink (hereinafter called "the property") for the term of 999 years computed from the 5<sup>th</sup> day of May 1914 less the last day thereof at the rent and subject to the covenants and conditions therein contained**

BETWEEN

**SANMAR LIMITED**

CLAIMANT

AND

**ANNETTE HOWELL**

DEFENDANT

Before the Honourable Mr. Justice Kevin Ramcharan

**Date of Delivery:** 21<sup>st</sup> January, 2019

**Appearances:** Mr. Alexei McKell for the Claimant.

Ms. Theresa Hadad, *instructed* by Ms. Nalini Jagnarine for the Defendant.

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**REASONS FOR DECISION**

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**Background Facts**

1. The Claimant is the holding company for an apartment complex located in St. Augustine. The ownership structure is not unusual for these types of properties. A holding company is the owner of the land and the owners of each of the residences are the shareholders of the company. It is not in dispute that the Claimant is the owner of the land by Deed of Lease number 14824 of 1978.
2. The Defendant is in occupation of one of the apartments on the land, apartment No. 28 (the apartment). There is dispute as to the nature of the occupation. The Claimant contends that she is a trespasser while the Defendant avers that she is the owner of the apartment, or in the alternative has been in adverse possession of the apartment since 1983.
3. By Statement of Case filed on the 15<sup>th</sup> day of August, 2012, the Claimant averred that it was the holder of a 999 year lease less one day calculated from the 5<sup>th</sup> day of May, 1914, pursuant to a Deed of Assignment between one Geddes Ferreira and the

Claimant. The Claimant avers that it is entitled to possession of flat number 28 (the apartment), in which the Defendant is an occupant. It alleges that through a title search revealed that the Claimant was the owner of the apartment, and when confronted with a request for proof of ownership, the Defendant, through her then Attorney at Law produced an assessment of ownership from the Tunapuna Warden's Office, and the fact that WASA recognised her ownership of the apartment. The Claimant countered that this was insufficient proof of ownership.

4. Despite this, the Claimant avers that when its Annual Returns were being updated, the Defendant was wrongly, through inadvertence or mistake, listed as a shareholder of the Claimant. The Claimant wrote to the Defendant on numerous occasions asking her for proof of ownership and/or for possession of the apartment, which the Claimant responded to, and did not deliver up possession of the premises. The Claimant also averred the Defendant, despite being in occupation of the premises refused to pay maintenance fees, which were due from each apartment.
5. The Claimant therefore, claimed possession of the apartment, damages for trespass as well as payment of the maintenance fees which were due.
6. In her Amended Defence and Counterclaim, the Defendant averred that action was not brought with the proper authorisation of the Claimant, as pursuant to the Articles of Association, the Claimant's Board of Directors was, until all flats were allocated, to be appointed by Mr. Ferreira. It was noted, that the Claimant itself averred that all the flats had not been allocated, and therefore, the appointment of the various

members of the Board of Directors, since 1995, was *ultra vires* the Claimant's Articles of Association.

7. The Defendant also, outlines the procedure for the transfer of ownership of the flats to purchasers. This process, in so far as, is relevant is outlined below:
  - a. Each apartment is allocated 20 shares in the Claimant;
  - b. Six Hundred and Forty (640) of these shares was allocated to Mr. Ferreira;
  - c. Upon the transfer of each apartment, 20 shares would be transferred to the purchaser; and
  - d. Only an owner of a flat may be a shareholder of the company.
  
8. The Defendant further averred that the Deeds of Lease with respect to the individual flats showed that they would be executed after the purchaser became a Shareholder.
  
9. The Defendant averred that the assessment of her as owner of the apartment in the Tunapuna Warden's Office is sufficient to establish her ownership of the apartment, and further, avers that the Claimant is estopped from denying her ownership for a number of reasons:
  - a. The fact that she is assessed as owner in the Tunapuna Warden's Office;
  - b. The fact that she was listed as a Shareholder in the Claimant from 2001 to 2010, and in 1994;
  - c. The fact that the Claimant wrote her on several occasions demanding payment of outstanding maintenance fees; and

- d. The fact that she insured the apartment through a group insurance plan administered by the Claimant.

10. She avers that she acted to her detriment on the acceptance by the Claimant that she was in fact the owner of the apartment by:

- a. Not purchasing any other property;
- b. Doing substantial work on the premises; and
- c. Generally maintaining the apartment.

11. She claimed that the Claimant held the apartment on trust for her.

12. In the alternative, she claimed that she was in undisturbed possession of the apartment from 1981 to 2010, and therefore, was entitled to possession of the apartment pursuant to sections 3 and 22 of the Real Property (Limitation) Act, Chapter, 56:03.

13. In its Amended Reply and defence to counterclaim, the Claimant denied that it lacked proper authorisation from its properly constituted Board of Directors to institute the proceedings. It averred that in 1994, an interim committee of owners met (at which the Defendant was not present) and the issue of the outstanding accounts was raised, together with the issue of outstanding maintenance owed by owners, including the Defendant. The Claimant alleges that on the 4<sup>th</sup> day of December, 2000, the Claimant held its Annual General Meeting (AGM), at which the Board of Directors was elected

in accordance with the Claimant's articles. It further, averred that a standard letter with respect to overdue maintenance fees was sent to owners in arrears.

14. At that meeting the issue of ownership was raised and it was revealed that a search had uncovered that the Claimant was still the owner of a number of flats (including the apartment) and that the occupiers of these flats would be required to provide proof of their ownership.

15. The Claimant alleges that there was no acquiescence of the Defendant's ownership, and cites in relation thereto several occasions at the Claimant's Annual General Meetings, or at meetings of the Board of Directors, the issue of the Defendant's ownership was raised, and that the Defendant had to produce proof of ownership and that the assessment roll and WASA acceptance was not sufficient.

16. The Claimant further, averred that the Defendant could not be considered a Shareholder of the Claimant as she was not the holder of a share certificate in the Claimant, and had never made a request for such a certificate.

17. With respect to the claim for a possessory title, the Claimant averred firstly, that as the apartment was an upstairs apartment, it could not be subject to the provisions of sections 3 and 22 of the Real Property Limitation Act. It further, averred that the payment of maintenance fees between 1992 to 1997, defeated any claim to adverse possession.

18. This was the state of the pleadings when directions for trial were first given in May of 2015 and a trial fixed for February of 2016. However, in the witness statement filed on behalf of the Claimant, its Corporate Secretary stated, that the Claimant had filed amended returns removing the Defendant as a listed Shareholder. Further, at the same time, returns were filed for 2011 to 2014, which omitted the Defendant as a Shareholder.

19. This caused the Defendant concern, and the trial was vacated and the matter was relisted for a Case Management Conference. Eventually, permission granted to the Defendant to file and serve a re-amended Defence and counterclaim. In it, she averred further, the sequence of events outlined above, and that the Defendant had not been removed as a Shareholder in the pre-continuation returns from 1993 to 1999. She avers further, that in light of the returns from 1993 to 1999, especially which was signed by Mr. Ferreira, the Claimant was estopped from denying that she was the owner of the apartment. In its re-amended defence, the Claimant contended that the amendments and the returns for 2011 to 2014, were filed so that the Claimant could take advantage of the amnesty, but averred that the Claimant was willing to adhere to the original position that the Claimant was a Shareholder of the premises.

## Evidence

20. At trial, there were 2 witnesses. The Claimant's corporate Secretary gave evidence on its behalf, while the Defendant gave evidence on her behalf.
21. Mr. Colvin Blaize is the Corporate Secretary of the Claimant since 1995. In his first witness statement, he went through the history of the land upon which the said apartment lies. He further outlined the steps which were taken by the Claimant in addressing the issue surrounding the Defendant and her occupation of the said apartment. For the most part, the witness statement outlined what was contained in the Claimant's Statement of Case and Reply and Defence to Counterclaim.
22. He indicated that as far as 2000, the Defendant had been requested to prove her ownership of the said apartment, and that the various documents she had provided could not be considered adequate proof, and that a deed of lease would be required.
23. With respect to the *locus* of the Board of Directors to bring the current action, he stated, that the board was duly elected. He notes, that at the AGM held on the 4<sup>th</sup> day of December, 2000, an Agenda item was the Election of Officers which was duly carried out in accordance with the Company's Articles.
24. He further stated, that in 1994, it was noted, that the accounts were being audited and that the Annual Returns were being filed to bring the company into good standing. It was observed that the Annual Returns for the previous 5 years had not been

submitted. He further stated, that the names of the presumptive lessees were listed as Shareholders.

25. He stated, that the Annual Returns of the Claimant were amended to “cure the inadvertent” listing of the Defendant as a Shareholder in the Claimant, noting that the Claimant has never requested a share certificate, and further, that she only became aware that she was listed as a Shareholder during the currency of these proceedings.

26. He further states, that the Defendant has not paid any maintenance fees from January, 1995 to August, 2012, when this action was filed. Further, there were works done on the compound for which all owners were required to pay the sum of \$7,700 which the Defendant has not paid. He stated, that the value of the said apartment is approximately \$750,000 and the monthly rental value is \$3,500 per month.

27. In his supplemental witness statement, he stated, that the amended Returns were filed to correct the inclusion of the Defendant as a Shareholder which was done through inadvertence. Further, the returns for 2011 to 2014, were filed so that the Claimant could take advantage of an amnesty being offered by the government with respect to penalties for the late filing of returns.

28. In Cross-Examination, he was questioned extensively on the Memorandum and Articles of Association. He stated, that he was familiar with them, but that they were not relevant to the proceedings, so that they were not disclosed. He did not agree that all the leases for the flats had to be issued before the Board of Directors could be

changed. He stated, that Mr. Ferreira was involved in the appointment of the Board of Directors.

29. With respect to the said apartment, he stated, that the Defendant had been masquerading as a lessee, and that other persons who had issues were not masquerading as lessees. He said, that some persons said that they could not find their share certificate had to provide documentary evidence of the same and they would have been provided with a replacement certificate.

30. He could not explain why the Defendant was listed as a Shareholder in the 1993 Returns, and surmised that Mr. Ferreira had made a mistake similar to him. He himself did not have a conversation with Mr. Ferreira to ascertain why she had been listed as a Shareholder. He did not accept that the minutes reflected that certain persons had not been issued share certificates.

31. With respect to the amended returns, he could not say why the shares which had been allocated to the Defendant were allocated to Mr. Ferreira. He said, that the reason for the amendment to the returns was to stop the propagation of the error he made.

32. With respect to the 1993 return, he stated, only aware of it after the re-amended defence and counterclaim. He could not offer an explanation for why Mr. Ferreira would have listed Ms. Howell as a Shareholder in 1993. He surmised that Mr. Ferreira may have made the same error that he did. He did not speak with Mr. Ferreira to enquire as to why the Defendant was listed as a Shareholder in 1993.

33. In her first witness statement the Defendant stated that she and her late husband went into possession of the said apartment in 1981. The arrangement for the purchase of the said apartment was done in 1982. She stated, that they carried out various repairs to the apartment, including wiring it, installing metal burglar proofing. She stated, that her husband had all the relevant receipts for these works, and they were either destroyed or misplaced. Later works were completed, but she does not have all the receipts for those works, as she did not anticipate that she would need them in these proceedings.

34. She states, further that in 1991, she, her husband and their family went to the United States, during which time they left one Lethan Bernard until 1995, and then it was rented to one Mr. Pena who left in 1999. Her family returned in 1996, but did not return to the apartment until 1999, after the death of her husband, who died unexpectedly in 1998. She stated, that she paid maintenance for the premises up to 1997.

35. She then outlines the various correspondence that passed between the Claimant, the Claimant's Attorneys at Law and her Attorneys at Law. She further alleges that she was listed in the Company's Annual Returns as a Shareholder from 1994 to 2010, the records she had available to her at the time, as a Shareholder, and that pursuant to the company's Articles, this was how transfers of the various flats were to be executed.

36. In her supplemental witness statement, she stated, that when she prepared her original witness statement, she was unaware that Amended Annual Returns had been filed. She also stated, that she was able to obtain the completed annual return for 1993, which was signed by Mr. Ferreira and which listed her as a Shareholder. She stated, that the only amendment to the Return seemed to be the removal of her name as a Shareholder. She further noted, that in the returns filed for 2011 to 2014, she was not listed as a Shareholder.

37. In cross-examination, she indicated that the paperwork with regard to the transfer of the said apartment was undertaken by her husband and his Attorney at Law. She indicated that they moved into the house before the transfer, as the person from whom they were purchasing allowed them to enter. She stated, that Mr. Kujifi had the relevant documents with respect to the said apartment, including a share certificate if she had one. She indicated that she only realised that she was listed as a shareholder when her Attorney at Law did the relevant searches.

38. With respect to the production of her Deed, she indicated that Mr. Kujifi had all the relevant documents and would have dealt with the matter. She stated, that she gave the correspondence she received from the Claimant and its Attorneys at Law to Mr. Kujifi to deal with. She denied that she owed maintenance fees for the premises.

### **Submissions of Parties**

39. In its submissions, the Claimant submitted that the Board of Directors was properly constituted and clothed with the authority to commence the proceedings. It alleged

that the issue of the Memorandum and Articles of Association were irrelevant to the instant proceedings. Further, it noted, that Mr. Blaize indicated that Mr. Ferreira was involved in the change of Directors, and that he was part of the process.

40. With respect to the ownership of the said apartment, it was submitted that there was no doubt that the Claimant was, by virtue of Deed number 14824 of 1978, the holder of the residue of 999 years of the block of 33 apartments, and therefore the Defendant could only displace the Claimant as owner, if:

- a. She could produce a Deed of lease and share certificate;
- b. The Court granted a declaration that by its actions, the Claimant recognised that the Defendant was the beneficial owner of the said apartment; or
- c. If the Defendant had acquired a prescriptive right to the said apartment.

41. Dealing with the issue of an estoppel, the Claimant contended that its conduct through the AGM and various board decisions, coupled with the various correspondence passing between the Claimant, its various Attorneys at Law, and the Defendant and her then Attorney at Law, that the Claimant never held out the view that the Defendant was the owner of the said apartment. It was further, argued that the evidence of Mr. Blaize where he said that the inclusion of the Defendant as a Shareholder was through inadvertence was to be preferred.

42. With respect to “adverse possession, the Claimant submitted that the Defendant failed to establish the relevant animus possidendi, as the Defendant stated that she and her husband entered into possession with the intent to purchase, and that

Mr. Kujufi was the person in conduct of those arrangements, and further, that she paid maintenance fees at the latest 1997.

43. The Claimant took issue with the fact that in her Re-Amended Defence and Counterclaim, she purported to add a further relief apart from the amended returns which the Claimant filed.

44. In her submissions, the Defendant contended that the Claimant was bound by its Memorandum and Articles of Association. She contended that the lack of due authorisation (as the Board was not properly constituted), was fatal to the claim.

45. With respect to the question of possession, the Defendant contended that failed to establish that it was entitled to possession of the said apartment. She noted, that the Claimant failed to establish that it was ever the owner of the block of shares which related to the said apartment. Further, she noted that although the Claimant pleaded that the Defendant was wrongly listed as a Shareholder when the company was filing its Returns, trying to get its house in order, this did not account for the fact that she was listed as a Shareholder in 1993, in a return signed by Mr. Ferreira.

46. Further, she submitted that the Claimant acknowledged that there were other owners who did not have share certificates.

47. Further, she noted the failure of the Claimant to disclose its Returns, its Memorandum and Articles of Association as well as the Draft Deed and Agreement annexed thereto. She invited the Court to make several adverse inferences based on that.

48. With respect to the Counterclaim, she submitted firstly, that the Claimant was a constructive trustee of the said apartment, in that the Company took ownership of the land on the basis that the persons who purchased flats through shares would be issued Deeds of Sub-Lease. The Claimant was bound by its constituent documents, which provided that a person could only become a Shareholder upon the purchase of one of the flats, and the Deed of Sub-Lease was to be executed immediately upon or after the transfer of shares taking place.

49. She contended that in the circumstances of the case, where she was listed as a Shareholder, the Claimant was bound by its constituent documents and the agreement between itself Mr. Ferreira to issue a Sub-Lease to her. She contended that the fact that she would not have been privy to the agreement to purchase the flat does not preclude her from being the beneficiary of such a trust.

50. With respect to proprietary estoppel, after outlining the well-known criteria required to establish a constructive trust, she submitted that the action of the Claimant in not taking any action against her, and treated with her as an owner of apartment 28 and by representations made by the company in its constituent documents. The Defendant alleged that she expended money in repairs and renovations to the said apartment, and that it would be unconscionable in the round to have the Claimant

reside from the position that the Defendant was the legitimate owner of the said apartment.

51. With respect to adverse possession, she submitted that there was no question that the Defendant had been in possession and/or control of the subject premises. She further submitted that in view of the Defendant's conduct with respect to the property that the animus possidendi had been established.

52. Looking first at the Preliminary objection raised by the Defendant with respect to the *locus standi* of the Claimant to bring the proceedings, the Court notes the evidence of Mr. Blaize that the appointment of the Board of Directors in 1995, was done with the input of Mr. Ferreira, and that he had indicated a desire to withdraw from the management of the complex and hand it over to the Claimant. The Court further notes that the Claimant has been acting with its current format for no less than 23 years, and 15 years at the time of the filing of the action. It would in my view be impractical to hold the Board as being illegally constituted.

53. Considering the Substantive claim, the Claimant's case is predicated on the basis that the Defendant is not entitled to possession of the premises in any way. It would be therefore useful to consider the counterclaim first, to see whether the Defendant has established that she has a right to possession of the said apartment.

**Has the Claimant established that there is a proprietary estoppel?**

54. With respect to the issue of proprietary estoppel, the Court is of the view that the conduct of the Claimant in general has made it clear that it does not accept that she is entitled to possession of the premises, or that she is an owner of the said apartment. The fact that she was sued for arrears of maintenance in my view does not, in the face of the other correspondence passing between the parties support the contention that the Claimant accepted or represented that the Defendant was the owner of the said apartment. It is the Court's view that the actions filed were filed as the Defendant was the person in occupation of the said apartment, and therefore the person from whom any outstanding maintenance fees could be recovered.

55. With respect to the delay, while the Claimant did take over a decade to file the instant proceedings, it always asserted that it required proof of the Defendant's ownership, and that the documents which had been provided were in the Claimant's view insufficient.

56. The only representation that could have been said to have been made was the fact that from 1994 (when the 1993 Return was filed) to 2015, the Defendant was listed in the Claimant's Annual Return as a Shareholder. However, it is to be noted that the Defendant was unaware of this fact until after these proceedings had been filed, so it was not possible for her to have relied on that representation.

57. In the circumstances, the claim for proprietary estoppel must fail.

**Has the Defendant established that she is in adverse possession?**

58. The issue of adverse possession only arises if the Defendant fails to establish either that there is a proprietary estoppel, or that the Claimant holds the said apartment as trustee for the Second Defendant.

59. It noted by both sides, the real issue to be determined is that whether the Defendant had the required *animus* to establish an intention to possess. The Claimant makes note of the fact that the Defendant paid maintenance fees for some period of time, and had, through her own admission, entered into possession to legitimately acquire the said apartment.

60. I do not agree that these factors displace any *animus possidendi*. The Defendant and her husband took possession of the premises with the intention to own it. If the Claimant's case is to be accepted, no legitimate transfer of ownership took place. However, the Defendant, from the outset, first with her husband, and thereafter on her own accord, occupied, and control with the intent to own it. The fact that the maintenance fee was paid does not advance the Claimant's case. The payment of maintenance fees *is what the owners of the various flats do*. The fact that the maintenance fees were paid further establishes that the Defendant was treating the flat as her own, within the context of the behaviour of the owners of the flats.

61. In the circumstances, the Court would be willing to hold that the Defendant has establish that, in the event that there is no constructive trust, that she has been in “adverse possession’ of the said apartment.

### **Was There a Constructive Trust?**

62. With respect to the question of a constructive trust, regard must be had to the Claimant’s Memorandum and Articles of Association. It is provided therein that the only way that a person *other than Mr. Ferreira*, who was issued the majority of the shares in the Claimant at the execution of the 1978 Deed, could become a Shareholder, was by purchasing one of the flats. Therefore, any person listed as a Shareholder is *prima facie* to be considered an owner of one of the flats.

63. Mr. Blaize stated, that the reason why the Defendant was listed as a Shareholder was that they were working on the assumption that those persons in occupation and who were presumptive owners were Shareholders. It was through inadvertence and/or mistake that the Defendant had originally been included, there was a rush to file the Returns as a matter of urgency in order to continue the Claimant under the Company’s Act. For the moment, the court is willing to accept this explanation, however, the court notes that it is passing strange that the Returns from 1994 to 1999, were all filed in June, 2000, the first on the 1<sup>st</sup> day of June, 1995, the majority on the 12<sup>th</sup> day of June, 1995, and the last on the 13<sup>th</sup> day of June, 1995, while the Claimant was writing to the Defendant demanding that she show proof of her ownership of the said apartment or vacate the same, by letter dated the 12<sup>th</sup> day of June, 1995. It seems

remarkable to me that such divergent courses of action would take place without some other explanation for the Defendant being listed as a Shareholder.

64. Even if the Court were to accept the Claimant's assertion, this does not explain why Mr. Ferreira included the Defendant as a Shareholder in the 1993, return which was filed in 1994. Mr. Blaize in cross-examination, suggested that it could be that Mr. Ferreira made the same mistake that he did, and simply added her as she was "masquerading" as a lessee.

65. This is simply not good enough. Mr. Blaize freely admitted that he had no conversation with Mr. Ferreira as to why the Defendant was listed as a Shareholder. This cavalier attitude is clearly insufficient to overturn the presumption that the Claimant was a Shareholder in 1993, when she was listed in the Company's official records, (the Annual Returns filed at the Companies Registry) as a Shareholder. It appears that the Claimant had no other listing of Shareholders.

66. When one takes the fact that the Defendant was listed as a Shareholder in 1993, in circumstances where only persons who have purchased flats can become Shareholders, together with the fact that she was assessed in the District Revenue office as the owner of the said apartment, and the fact that she had a WASA connection in her name, and was the holder of a policy of insurance as part of a group with the other flat owners, leads the court to the conclusion that there was some an agreement between Mr. Ferreira and the Defendant's Husband for the purchase or transfer of the said apartment, or at the very least, an acknowledgement by Mr. Ferreira, a former director and controller of the Claimant that the Defendant was

beneficially entitled to the said apartment. In the Circumstances, I accept the Defendant's submission that this being the case, the Claimant holds the said apartment on trust for the Defendant and therefore must do what is necessary to effect the necessary transfer to her. However, I am not of the view that the costs of the preparation and registration ought to be borne by the Claimant, as the normal practice is that the purchaser pays those costs.

67. With respect to the maintenance fees, I am of the view, that since the Defendant was (a) in occupation and (b) the beneficial owner of the said apartment, she was liable to pay maintenance fees to the Claimant. However, the limitation period would have expired with respect to all fees save those which accrued less than 4 years before the claim was filed that is 4 years prior to the 9<sup>th</sup> December, 2010, or 9<sup>th</sup> December, 2006.

### **Order**

68. In the circumstances the order of the court is as follows:

- a. The Claim is dismissed with costs to be paid by the Claimant to the Defendant assessed in the sum of \$14,000.00.
- b. It is declared that the Claimant holds the said apartment on trust for the Defendant.
- c. The Claimant do execute a Deed of Lease transferring unto the Defendant the residue of the Lease with respect to the said apartment within 30 days of it being presented to them for execution; in default, the Registrar of the Supreme Court be empowered to do the same.

- d. Costs associated with the preparation and execution of the Deed of Lease to be borne by the Defendant.
- e. The Defendant to pay the maintenance fees associated with the said apartment from the 9<sup>th</sup> day of December, 2006, to today's date and continuing thereafter as and when they become due.
- f. Costs of the counterclaim to be paid by the Claimant to the Defendant assessed in the sum of \$14,000.00.

**KEVIN RAMCHARAN  
JUDGE**