

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2024-03093

BETWEEN

EAST PARK VILLAS LIMITED

FIRST CLAIMANT

CHARLIEVILLAGE SERVICE STATION COMPANY LIMITED

SECOND CLAIMANT

AND

ASHOK THOMAS

FIRST DEFENDANT

DIANN THOMAS

SECOND DEFENDANT

Before: The Hon. Mr. Justice Westmin R.A. James

Date: 17th November 2025

Appearances: Mr. Naveen Maraj and Shania Maharaj Attorneys-at-Law for the First Claimant
Mr. Asaf Hosein and Emile Pollard Attorneys-at-Law for the Second Claimant
Mr. Kent Samlal, Shirvan Ramdhanie and Mrs. Nadia Hassan-Mohammed
Attorneys-at-Law for the First and Second Defendants

JUDGMENT

1. This matter concerns a dispute over alleged breaches of covenant and unlawful construction works at a townhouse development known as East Park Villas, situated at Maruana Road, Valsayn South, in the Ward of Tacarigua. The Claimants, East Park Villas Limited (“the First Claimant”) and Charlievillage Service Station Company Limited (“the Second Claimant”), seek declaratory and injunctive relief against the Defendants, Mr. Ashok Thomas and Mrs. Diann Thomas, who are the Lessee owners and occupiers of Townhouse No. 12 within the development. The Claimants contend that the Defendants have engaged in construction and ground works in breach of restrictive covenants contained in the Head Lease governing the development, without obtaining requisite permissions from the Lessor, the management company, or the Town and Country

Planning Division. The Defendants deny any wrongdoing and assert that the works undertaken were lawful remedial works carried out with the knowledge and consent of the management company and that the proceedings are improperly brought.

Background

2. In the Re-Amended Claim Form and Statement of Case, the Claimants seek, *inter alia*, declarations that the construction works being undertaken by the Defendants on Townhouse No. 12 and the adjoining common grounds of the development are unlawful, unauthorized, and in breach of the covenants contained in the Head Lease, Deed No. 9179 of 1982. The Claimants further seek injunctions restraining the Defendants, their servants, agents, or contractors, from continuing any such works and from interfering with the Claimants' or other townhouse owners' use and enjoyment of the common areas of the development. The Claimants also claim damages, interest pursuant to section 25 of the Supreme Court of Judicature Act, and costs.
3. The Re-Amended Statement of Case elaborates on the Claimants' assertion that East Park Villas Limited is the management company and one of the lessors entitled to the reversion under the Head Lease. The Second Claimant, Charlie Village Service Station Company Limited, is both a shareholder in the First Claimant and the Lessee of Townhouse No. 6 within the development. The Claimants aver that the Defendants, being Lessee owners of Townhouse No. 12, are bound by the covenants contained in the Head Lease, which include prohibitions against making alterations to the demised premises without the prior written approval of the Lessor, and obligations to refrain from any act constituting a nuisance, annoyance, or interference with the common property.
4. It is alleged that, beginning in or about early September 2024, the Defendants caused or permitted the demolition of a prior annexure at the rear of Townhouse No. 12 and commenced new construction works extending beyond the footprint of the former annexure, including the excavation of trenches adjacent to perimeter walls, and the rerouting of wastewater pipes onto the property of Valpark Shopping Centre. The Claimants contend that these works were undertaken without any written approval from the Lessor or the Town and Country Planning Division, thereby constituting a breach of covenant and a nuisance affecting the use, enjoyment, and value of the development.
5. The Claimants further allege that the works materially altered the character of the development, impeded access to common areas such as the electrical meter bank, and created hazards and inconvenience to the other townhouse owners. Reference was also made to earlier judicial proceedings in the 1980s or 1990s in which a prior owner of Townhouse No. 12, Dr. Abraham, was allegedly ordered to remove an earlier unlawful

annexure. The Claimants rely on this history to assert that the Defendants' actions revive a longstanding pattern of breach and disregard of the development's restrictive covenants.

6. By their Amended Defence and Counterclaim, the Defendants deny that the works undertaken were unlawful, unauthorized, or in breach of covenant. They assert that the construction works were purely remedial in nature and intended to address a safety hazard posed by the deteriorating roof of the existing annexure. The Defendants maintain that the works fall within the exception under section 8(2)(a) of the Town and Country Planning Act, Chap. 35:01, being interior or non-material alterations that do not require formal planning permission.
7. The Defendants rely on the minutes of a purported Special General Meetings of the Board and shareholders of East Park Villas Limited, held on the 29th January 1987 and 14th September 2024 respectively, in which the continuation and renovation of the structure attached to Townhouse No. 12 were allegedly discussed and met with no objection. The Defendants contend that the Claimants, or persons purporting to act on their behalf, were aware of and acquiesced in the continuation of the structure. They also rely on correspondence from the Town and Country Planning Division dated the 7th July 2008, which indicated that due to the age of the structure, no enforcement proceedings could be pursued to compel its demolition.
8. The Defendants further plead that no enforcement action has been initiated by the Town and Country Planning Division in respect of their current works, and that no complaints have been registered with the Division. They therefore assert that this Court should not usurp the role of the planning authority by declaring their works unlawful.
9. A further aspect of the Defence is that the proceedings were improperly commenced in the name of the First Claimant, East Park Villas Limited, without the authority of its Board of Directors or compliance with the requirements of the Companies Act, Chap. 81:01, and the Company's By-Laws. The Defendants cite sections 97, 99, and 239 of the Companies Act to argue that no resolution or approval was obtained from the Company's officers authorizing the commencement of litigation and that the instant proceedings therefore amount to an abuse of process.
10. It follows that, in their Counterclaim, the Defendants seek declarations that the works conducted are lawful, that they were duly authorized by the First Claimant and the Town and Country Planning Division, and that the Claimants have unlawfully interfered with their quiet enjoyment of their premises. They also seek damages for trespass, nuisance, and interference with contractual relations, together with costs.

11. The Claimants and the Defendants have both filed closing submissions on 13th November 2025.

Claimants' Evidence

Robindranath Naraynsingh

12. Mr. Robindranath Naraynsingh, the Managing Director of Charlievillage Service Station Company Limited, stated that his company owns Townhouse No. 6 and is a shareholder of East Park Villas Limited. He explained that he was authorized by both the First Claimant (East Park Villas Limited) and the Second Claimant (Charlievillage Service Station Company Limited) to give evidence and pursue the proceedings on their behalf. He recounted that the East Park Villas development was created under Deed No. 9179 of 1982, which established the covenants and easements governing the twelve townhouses. The Defendants' townhouse, No. 12, was originally owned by Dr. Abraham, who constructed unauthorized annexes in the 1980s. While the front addition was removed following court action, the rear annex remained until the Defendants demolished it in September 2024 without notifying the management company or other shareholders.
13. Upon being informed by Ms. Ojar of the demolition, Mr. Naraynsingh visited the site and found rubble and construction materials scattered across common areas, obstructing access and creating a safety hazard. He observed that the trenches being dug were wider and deeper than the footprint of the original annex and that they ran perilously close to the development's perimeter wall and electrical panel. He annexed photographs showing the encroachment and explained that wastewater pipes were being redirected into drains on the adjacent Valpark Shopping Centre property, which he described as illegal and dangerous. He contended that such works exposed all shareholders to potential liability and contravened the restrictive covenants of the Head Lease.
14. Mr. Naraynsingh stated that repeated attempts were made to have Mr. Thomas stop construction. When he refused, and after consultation with Dr. Shyam and Ms. Rhea Rahman, he was authorized to engage legal counsel and file injunctive proceedings. He received the company's stamp from Ms. Ojar on 5th September 2024, used it on the court documents, and returned it immediately afterward. He confirmed that his actions were taken with the explicit authorization of the company's directors, as evidenced by a written authorization letter from the Rahmans. The Second Claimant, as an investor, joined in the proceedings to protect its interest and the integrity of the common areas.
15. He rejected the Defendants' assertion that they were simply repairing the old annex, stating that only about three feet of the old side wall remained and that the new walls

were constructed of steel-reinforced concrete, rising eight blocks high, indicating a load-bearing, two-storey structure. Measurements he conducted showed the new walls stood only four inches from the perimeter boundary and approximately fourteen inches from the electrical meter bank, obstructing maintenance access and posing safety hazards. He annexed photographs showing these encroachments and the wall's protrusion beyond the townhouse's original building line.

16. Mr. Naraynsingh expressed concern that the Defendants' actions fundamentally altered the architectural façade of the development and set a dangerous precedent for other owners to build illegally. He asserted that the development's aesthetic uniformity and property values were being jeopardized and that his company's investment in Townhouse No. 6 would suffer depreciation as a result. He dismissed the Defendants' claims of financial loss as self-inflicted, emphasizing that the works were undertaken without any approvals or authorization from the lessors or Town and Country Planning. He concluded by requesting that the Court grant a permanent injunction restraining further construction, an order for removal of the illegal structure, and costs to be awarded to the Claimants.
17. Under cross-examination, the witness maintained that he was the managing director of Charlieville Service Station Company Limited and a shareholder in East Park Villas Limited, though he initially described himself as the owner of Townhouse No. 6. Counsel clarified that the property was in fact owned by the company, not by him personally. This distinction was material, as it bore directly on the question of whether he, in his individual capacity, had standing or authority to commence proceedings on behalf of the First Claimant. Mr. Naraynsingh conceded that his involvement was through the company but maintained that he had given the instructions to file the proceedings. When pressed, he accepted that he was responsible for communicating with the attorneys on behalf of the Claimants and that he had signed the relevant documents, including those relating to the injunction and the re-amended statement of case.
18. Counsel questioned the witness extensively on whether the proceedings were properly authorized by the Board of Directors of East Park Villas Limited. The witness confirmed that the authorization letter relied upon was signed by the directors, Shreya and Shyam Rahman, and dated September 2024, just two days before the claim was filed. He admitted, however, that he was uncertain whether this letter had accompanied any of the earlier filings such as the application for injunctive relief or the re-amended statement of case. He accepted that the document appeared for the first time after the Defendants raised the issue of lack of authorization in their Amended Defence and Counterclaim, but he stated that those procedural matters were handled by his attorneys

and that he could not speak to when or how the document had been filed. Counsel suggested to him that the authorization had been an afterthought, procured only after the challenge was raised; the witness denied that suggestion but could not explain the absence of earlier documentation.

19. The witness was also cross-examined on the two key email chains circulated by shareholder Mr. Satesh Bissram on the 7th and 13th September 2024. The first of those emails invited shareholders to a meeting at the East Park Villas poolside area to discuss “the EPV legal action.” The second email, dated the 13th September 2024, contained what were described as minutes of that meeting, indicating that several shareholders had no objection to the works at Townhouse No. 12 and preferred to address the issue without court proceedings. Counsel put these emails to Mr. Naraynsingh and established that his address appeared among the recipients. He initially denied that the first email amounted to notice of a shareholders’ meeting, contending that it was merely a “gathering,” and argued that it did not constitute proper notice under the company’s bye-laws. Counsel then drew his attention to clauses 12.3 to 12.5 of those bye-laws, which provide that shareholders may waive notice by attendance and that irregularities in notice do not invalidate resolutions passed at a meeting. Mr. Naraynsingh agreed that such provisions existed but maintained that they were inapplicable because, in his view, the meeting had not been properly convened and no formal resolutions were passed.
20. When asked whether he attended the meeting or voiced any objection to its convening, the witness admitted that he did not attend, did not communicate any objection to the meeting, and did not respond to either of the emails from Mr. Bissram. Counsel suggested that this failure to object, coupled with the content of the minutes showing unanimous shareholder non-objection to the Defendants’ works, undermined the Claimants’ position that the Defendants acted without approval. The witness disagreed, asserting that the meeting lacked legal effect and that attendance could not cure procedural irregularity. Nevertheless, he accepted that he had taken no steps to correct or contradict the record of the meeting once the minutes were circulated.
21. Counsel next drew the Court’s attention to an email dated 10th February 2025 from the then Chairman of East Park Villas Limited, Mr. Henry Rahman, notifying shareholders that permission had been granted to Mr. Ashok Thomas to undertake internal repairs to his townhouse, having satisfied the requirements of the company’s bye-laws. Mr. Naraynsingh accepted receiving this email and acknowledged that his company’s attorney had later responded on his behalf, confirming his awareness of and participation in that exchange. However, he conceded that no similar objection or response had been issued by him or his company to the earlier September 2024 correspondence in which

shareholders expressed no opposition to the works. This admission reinforced the inference that while he later disputed the legitimacy of the works, he had not contemporaneously objected to them.

22. The witness's personal knowledge of the Defendants' construction activity was also explored. He admitted that he did not live at East Park Villas, had never met Mr. Thomas prior to the litigation, and became aware of the works only through a telephone call from another shareholder, Ms. Naila Ojar. He said that he subsequently visited the property and observed trenches, walls, and what he described as a "mess," but he conceded that he never approached Mr. Thomas to inquire about the nature of the works or to confirm whether any approvals had been obtained. His decision to proceed directly to legal action without such inquiry was put to him as unreasonable; he responded that he relied on the covenants in the Head Lease and assumed that any construction required prior permission.
23. Finally, Counsel put to the witness the Defendants' position that the claim had been instituted without proper authorization and in defiance of the wishes of the majority of shareholders. Reference was made to a letter dated 12th February 2025 from the Defendants' attorneys, which asserted that the Board of Directors had acted without the authority of the shareholders and that most shareholders had expressly dissented from the institution of proceedings. Mr. Naraynsingh said he was unaware of that letter and rejected any suggestion that the claim was unauthorized, reiterating that he acted under the instruction of the Board as he understood it.

Rhea Rahman

24. Ms. Rhea Rahman, owner of Townhouse No. 2 and a former director of East Park Villas Limited, stated that she served as a director from 16th March 2024 until her resignation on 27th October 2024. She explained that in early September 2024, she was contacted by Ms. Naila Ojar regarding construction taking place at Townhouse No. 12. Upon visiting the property, she found that the entire rear annex had been demolished, leaving only a small section of wall, and observed trenches being dug along the boundary wall near the electrical panels. She was unaware of any authorization for such works and believed that the scale of the excavation indicated the Defendants' intention to erect a larger structure. No approvals or plans had been submitted to the Board or the management company for consideration.
25. Ms. Rahman recounted that on 3rd September 2024, she attempted to contact Mr. Thomas via WhatsApp, requesting that he meet with the Directors to discuss the construction. Mr. Thomas replied that he could only meet a week later. Concerned that

the works were progressing rapidly, the Directors, herself, Dr. Satesh Bissram, and Dr. Shyam Rahman, agreed to authorize shareholder Mr. Robindranath Naraynsingh to engage an Attorney and file an injunction on behalf of the Company. She and her father signed an authorization letter but initially withheld it, preferring to attempt an amicable resolution first.

26. On 4th September 2024, Ms. Rahman again messaged Mr. Thomas, urging him to halt construction. He responded that he would do so after completing the current payment phase with his contractor. A copy of the exchange was attached to her statement. The following day, she instructed that the company's stamp be provided to Ms. Ojar for Mr. Naraynsingh's use in finalizing court documents. She confirmed that the stamp was returned to her the next morning and that she subsequently delivered the signed authorization letter after the matter had already been filed. She maintained that at all material times, Mr. Naraynsingh acted with the directors' authorization and that the steps taken were necessary to protect the company's property and shareholders.
27. Ms. Rahman stated that the meeting held on 12th September 2024 was not properly convened under the company's bye-laws, as no notice was issued and no formal minutes were prepared. She also explained that she was later contacted by the police in June 2025 regarding the use of the company's stamp and confirmed to the investigating officer that Mr. Naraynsingh had been authorized by the directors to use it for filing the injunction. In her view, the Directors acted prudently and within their fiduciary obligations in light of the Defendants' refusal to pause construction despite requests and the lack of required approvals.
28. She further stated that, even as a shareholder following her resignation as Director, she continued to support the court action because the new structure appeared larger than the demolished annex and was constructed without requisite permissions. Ms. Rahman concluded that the company acted in good faith to preserve the rights and integrity of East Park Villas, as the Defendants' actions posed risks to the common property and potentially compromised the value and uniformity of the development.
29. Under cross-examination, Ms. Rahman confirmed that she was a shareholder and co-owner of Townhouse No. 2 at East Park Villas, residing there since 2006 and familiar with the company's by-laws. Although she had served the community in various ways, she stated that she had been a director at some point in time, secretary, or chairman of East Park Villas Limited.
30. Counsel questioned her on paragraph 14 of her statement, where she described the 12th September 2024 gathering as an informal meeting of tenants. She accepted

attending that meeting but was shown the 7th September 2024 email from then-chairman Mr. Satish Bissram, inviting shareholders to a meeting to discuss the “EPV Legal Action.” She acknowledged that her email address appeared among the recipients but said she could not recall receiving it. When shown the 13th September 2024 follow-up email containing minutes of the meeting, she agreed that she was listed as present and holding a proxy for her father, Dr. Shyam Rahman.

31. Ms. Rahman admitted that the minutes accurately recorded that the shareholders present had no objection to the works at Townhouse No. 12 and preferred to resolve the matter without litigation. She confirmed that she did not respond to or object to the minutes after receiving them. She also acknowledged that she had experienced no disturbance from the Defendants’ construction, as she lived at the opposite end of the compound, and that she first learned of the works through another resident, Ms. Naila Ojar.
32. When referred to the transcript of the 12th September meeting, Ms. Rahman agreed that she had advised Ms. Ojar not to take legal action until after meeting with Mr. Thomas, as she believed the matter could be resolved amicably. She explained that while she and her father had signed the authorization letter dated 3rd September 2024, she later sought to maintain peace once she learned more about the circumstances.
33. Finally, when taken to the company’s by-laws, Ms. Rahman accepted that clause 12.4 permitted shareholders to waive notice by attendance and that any irregularity in notice did not invalidate resolutions. She acknowledged that she attended without objection, thereby waiving notice, and agreed that the meeting was validly held. Overall, her cross-examination established that she attended the meeting, raised no objection to the construction, and did not oppose the shareholders’ collective decision to avoid litigation against the Defendants.

Niala Ojar

34. Ms. Niala Ojar, the owner of Townhouse No. 11 at East Park Villas, stated that her unit adjoins Townhouse No. 12, owned by the Defendants. She explained that upon her purchase in 1986, she became aware that the previous owner of Townhouse No. 12, Dr. Abraham, had constructed unauthorized annexes to both the front and back of his townhouse. While the front annex was demolished by East Park Villas Limited following intervention, the rear annex remained standing. She recalled that, at the time, the management company had obtained the court’s permission to remove it but never proceeded to do so. Over the years, she became more active in the company’s affairs and

assisted with administrative matters, serving as the initial contact point for official correspondence.

35. She stated that by late August 2024, the First Defendant, Mr. Ashok Thomas, informed her that he intended only to replace the roof of the old rear annex. However, in early September 2024, she observed from her window that the entire annex was being demolished rather than repaired. She described heavy banging and the eventual destruction of the structure, followed by the presence of construction materials scattered on the compound's common areas, including gardens and carparks. Trenches were dug close to electrical panels and perimeter walls, which caused concern about safety and the alteration of common property. She immediately informed the directors of East Park Villas Limited, including Dr. Satesh Bissram and Ms. Rhea Rahman, and discussed with shareholder Mr. Robindranath Naraynsingh the possibility of halting the works or seeking legal redress.
36. Ms. Ojar explained that she personally delivered the company stamp to Mr. Naraynsingh on 5th September 2024 for the purpose of using it on court documents relating to the injunction against the Defendants. The stamp was returned to her the next day and given back to Ms. Rhea Rahman. On 7th September 2024, she witnessed new construction at Townhouse No. 12 involving the laying of steel-reinforced concrete blocks, which led her to believe the Defendants were erecting a larger, two-storey structure. She also observed that the upper rear windows of the townhouse had been sealed, altering its external appearance. That morning, she was informed by Mr. Naraynsingh that an injunction had been served on Mr. Thomas, but despite this, work continued until midday. She recorded video footage showing the continuation of construction activity after service of the injunction.
37. Her statement emphasized that the new structure encroached on common grounds and obstructed access to areas essential for maintenance. She described continued dumping of construction materials on the common property even by October 2024, making the development unsightly. She took and annexed photographs to support her allegation. Ms. Ojar asserted that the meeting held on 12th September 2024, convened by Dr. Bissram, was not a properly constituted shareholders' meeting under the bye-laws of East Park Villas Limited, as proper notice was not given. According to her, any minutes prepared from that gathering were informal and were never adopted or signed by directors.
38. Finally, Ms. Ojar expressed strong objection to the Defendants' construction. She stated that the First Defendant misled her into believing that only the roof would be replaced when, in fact, an entirely new and larger structure was being built. She feared the two-

storey construction would obstruct her view, restrict access to the common areas, and negatively affect the character of the development. In her view, the Defendants acted without the requisite approval from East Park Villas Limited or Town and Country Planning, and she fully supported the legal proceedings brought to restrain further construction and to preserve the integrity of the development.

39. Under cross-examination, Ms. Naila Ojar confirmed that she had been an owner and resident of Townhouse No. 11 at East Park Villas since 1986 and was both a shareholder and long-standing director of the company. She also served as chairman and secretary at various times, and her address had previously been used as the company's registered office. She agreed that having lived at the development for nearly forty years, she was familiar with the company's by-laws and their procedures for convening shareholder meetings.
40. Counsel then asked about her familiarity with the company's by-laws, particularly the provision requiring twenty-one days' notice for meetings. Ms. Ojar confirmed her understanding of the notice requirement but initially denied knowing that such notice could be waived by shareholders. Counsel referred her to clause 12.4 of the by-laws, which expressly provides that attendance at a meeting constitutes waiver of notice unless the attendee objects at the outset. After reviewing the clause, Ms. Ojar accepted that the by-laws allowed waiver of notice and that procedural irregularities regarding notice did not invalidate resolutions once shareholders participated without objection.
41. Counsel next questioned her about the 7th September 2024 email from then-chairman, Mr. Satesh Bissram, calling a shareholders' meeting for 12th September 2024 to discuss "EPV Legal Action." Ms. Ojar confirmed that her email address appeared on the distribution list and that she received the notice but could not recall responding or objecting to it. She accepted that she did not attend the meeting but knew that it took place. She also confirmed receiving the 15th September 2024 email from Mr. Mishra containing the minutes of that meeting, which recorded that the injunction proceedings had been filed on misinformation, that the alleged noise disturbance was exaggerated, and that all attendees expressed no objection to the works being carried out by Mr. Thomas. Ms. Ojar agreed that the email reflected those sentiments.
42. Counsel questioned whether she had ever disputed or corrected the minutes circulated after the meeting. She accepted that she had not done so and that the document remained unchallenged. Counsel also asked whether she had included any signed minutes of that meeting in her witness statement, and she admitted that she had not. She accepted that in practice, not all minutes of East Park Villas meetings were signed and that there were other instances where unsigned minutes were kept on file. She

explained that in some cases she had printed minutes from her computer and had one signed by Mr. Bissram but noted that not all directors signed every record. She acknowledged that this was also the case for other meetings, including the 16th March 2024 annual general meeting and earlier meetings in 1987.

43. Counsel then drew her attention to a WhatsApp message she sent to Mr. Bissram, in which she advised him to withdraw from signing certain documents and noted that Mr. Thomas had promised to provide construction terms. She also acknowledged another message to him stating that she had contacted other shareholders to reassure them that they need not worry about legal fees, as “some of us will settle most of it.” She agreed that she did not ask shareholders to agree or disagree to legal action but instead sought to reassure them about financial matters. Counsel suggested that this message showed that she was aware of the possibility of proceedings before any proper authorization was obtained. Ms. Ojar stated that her intention was only to comfort other shareholders, not to pre-empt the process.
44. Finally, she confirmed that she had spoken to Mr. Thomas before the dispute began and that he told her he was replacing his roof. She accepted that she did not raise any formal complaint about his works at that time and that she had no personal objection to them. Her evidence under cross-examination reflected that while she was a long-serving shareholder and officer of East Park Villas, she did not object to the meeting’s validity, was aware of and did not dispute the minutes showing general shareholder non-objection, and did not personally experience or complain of any disturbance caused by the Defendants’ construction.

Defendants’ Evidence

Satesh Bissram

45. Dr. Satesh Bissram, the then Chairman of East Park Villas Limited, confirmed that in August 2024, he was contacted by Ms. Niala Ojar, owner of Townhouse No. 11, concerning construction works being done on Townhouse No. 12 by Mr. Thomas. Acting in his capacity as Chairman, he contacted Mr. Thomas, who informed him that he had obtained prior approval from the former Chairman, Mr. Henry Rahaman, to proceed with the works. Dr. Bissram followed up via email on 31st August 2024, asking for clarification of the works, and received a response confirming that Mr. Thomas would discuss the matter further upon his return to Trinidad.
46. He stated that on 3rd September 2024, he was approached by Ms. Theresa Rahman, acting for Dr. Shyam Rahman, a director of East Park Villas, who sought his approval as

Chairman to obtain legal advice and to consider legal action to stop the construction. He granted approval solely for the purpose of obtaining legal advice but denied ever authorizing the filing of legal proceedings or any injunction. Later that day, Ms. Ojar informed him that a shareholder, Mr. Robindranath Narinesingh of the Second Claimant, had gone to his attorney to prepare a pre-action protocol letter. Shortly thereafter, she told him that Mr. Narinesingh decided to file for an injunction, believing a pre-action letter would be futile. Dr. Bissram asserted that he never approved such steps and merely acknowledged receiving these updates without endorsing them.

47. He further recounted that Ms. Ojar later informed him that \$50,000 had been deposited with an attorney and that other directors intended to sign documents authorizing legal action despite his express refusal to do so. He made clear that at no point did he authorize any expenditure or execution of legal documents on behalf of East Park Villas Limited. He emphasized that no special general meeting or meeting of the shareholders had been convened to deliberate or ratify any such decision, and therefore, no corporate authority existed to initiate proceedings in the company's name.
48. According to his evidence, an injunction was filed on 7th September 2024 without his knowledge or approval. Upon learning of it, he immediately convened a meeting of shareholders for 12th September 2024. At that meeting, all directors, including Ms. Rhea Rahman, confirmed that they had not signed any document authorizing legal action. Mr. Thomas attended and presented the court documents he had been served with. Minutes and recordings of that meeting were tendered to substantiate these assertions. Dr. Bissram insisted that any filing in the company's name was done without Board approval and therefore unauthorized.
49. Following the meeting, he spoke directly with Mr. Narinesingh, who remained adamant that the litigation should proceed. Disturbed by what he viewed as an abuse of process, Dr. Bissram demanded the return of the company stamp, emphasizing that he had never permitted its use for any legal filing. He subsequently tendered his resignation as Chairman, stating that he wished to distance himself from the irregular actions taken by others purporting to act on the company's behalf. His witness statement therefore underscores that the claim was initiated without the requisite corporate authorization and contrary to his express instructions as Chairman.
50. Under cross-examination, Dr. Bissram confirmed that he was the chairman of the board of East Park Villas Limited during the material period and a resident owner of Townhouse No. 4. He accepted that he was familiar with the company's by-laws and that the business and affairs of the company were managed by the board of directors, not the shareholders. He acknowledged that there was no unanimous shareholder agreement

limiting the powers of the directors. Counsel took him through clauses 4.1, 11.1, and 11.10 of the by-laws, which he agreed empowered the directors to appoint agents and officers as they deemed necessary, without requiring written authority, and that the company secretary was the custodian of the minute books and company seal.

51. Counsel questioned Dr. Bissram about his knowledge of the Head Lease, and in particular, the covenants restricting alterations without written consent and requisite planning approvals. He accepted that as chairman he did not receive any plans, specifications, or written requests for approval from the Defendants and that none were lodged with the board. He also confirmed that he had requested plans by email but received none. He admitted that he had not personally viewed the rear of Townhouse No. 12 before the dispute arose, though he assumed it was accessible like other units.
52. When shown the minutes of the 12th September 2024 meeting, Dr. Bissram confirmed that he had called the meeting by email dated the 7th September 2024 and that his name appeared as chairman. He acknowledged that he could not recall receiving proxies from Rhea Rahman or from the Defendants and did not recall any lodged proxies for other shareholders such as Brent Ruptrensingh Jr. He agreed that the minutes reflected that all attendees expressed no objection to the construction at Townhouse No. 12 and that none consented to the filing of legal proceedings. However, he clarified that the minutes did not record any written approval for the construction and that, as chairman, he never gave such consent.
53. When referred to the transcript of the 12th September meeting, Dr. Bissram accepted that he had stated, "I want to make this clear. In the beginning, I did give approval," but explained that he had only authorised "legal proceedings" generally, not specifically an injunction. He said that at the time, he believed he was approving a "cease and desist" correspondence to the Defendants and did not understand that the proceedings would take the form of a court injunction. Counsel also drew his attention to a WhatsApp exchange between himself and Ms. Naila Ojar, where she indicated that an injunction was being filed and he responded with a "thumbs up." He accepted that this was a positive acknowledgment but said it was not intended as formal approval.
54. Counsel for the Defendants later cross-examined Dr. Bissram on the by-laws concerning the convening of meetings. He accepted that, under clause 12.2, only the board of directors as a body could convene a special meeting, and that he had not specified the 12th September meeting as a special meeting nor received any shareholder requisition. He admitted that he did not state in his witness statement that he had consulted the other directors before calling the meeting. When pressed, he accepted that he did not consult Dr. Shyam Rahman prior to doing so. He also accepted that under clause 11.10,

only the company secretary was empowered to give notice of meetings, and he was not the secretary at the time.

55. When questioned by the Court, Dr. Bissram confirmed that no written approvals, plans, or planning permissions were ever submitted by the Defendants and that no licences or regulatory permissions had been received by the board. He agreed that the works extended beyond the boundaries of Unit 12 and involved digging drains and placing construction materials on the common areas. He confirmed that an earlier structure had existed behind Townhouse No. 12 but that it was empty and later demolished before new construction began. He agreed that no formal request had been made to the board to carry out any works outside the unit.
56. The Court also questioned him about inconsistencies in his evidence regarding the authorisation of proceedings. He acknowledged that he approved legal action in response to a request from Dr. Shyam Rahman's wife on 3rd September 2024 but maintained that he understood this as approving "legal advice," not immediate litigation.

Ashok Thomas

57. Mr. Ashok Thomas, the First Defendant, stated that he and his wife acquired Townhouse No. 12 in the East Park Villas development by a mortgagee sale from the Royal Bank Mortgage and Finance Company Limited in 1986. The purchase included one ordinary share in East Park Villas Limited, the company managing the development. Upon moving in, he discovered that their townhouse had an extension built by the previous owners, Saphraj and Rukmin Abraham. At a Special General Meeting held on 29th January 1987, it was acknowledged that the extension had been built without authorization; however, the shareholders resolved that no action would be taken to demolish it, thereby permitting it to remain as part of Townhouse No. 12.
58. In 2001, the Claimants, Charlie Village Service Station Company Limited, owners of Townhouse No. 8, initiated correspondence through their attorney, Mr. Robert Boodoosingh, alleging that the Thomases had erected an unauthorized structure on the common area. They demanded its demolition and reported the matter to the Town and Country Planning Division and the Fire Services Department. However, in July 2008, the Planning Division confirmed that the issue was too old to pursue. No demolition was ever carried out. Years later, due to the deteriorating condition of the structure, particularly its flat roof, Mr. Thomas decided to undertake renovations in 2023 after informing the then Chairman of East Park Villas, Mr. Henry Rahaman, who raised no objections. He also consulted nearby townhouse owners who similarly offered no resistance to his intended works.

59. Construction began on 27th August 2024, during which Mr. Thomas temporarily relocated his 93-year-old mother, the long-time occupant of the property. Shortly after, the new Chairman, Mr. Satesh Bissram, contacted him seeking clarification about the works. Mr. Thomas assured him that the renovations were discussed with the prior Chairman and that he would provide further details upon his return to Trinidad. He subsequently exchanged emails with Mr. Bissram confirming this understanding. During the renovation, his contractor discovered structural defects in the foundation, which necessitated urgent remedial work involving the use of a concrete pumping truck. Mr. Thomas emphasized that the project was strictly a renovation, not an expansion or demolition of the existing structure.
60. On 7th September 2024, Mr. Thomas was served with an injunction obtained by the Claimants to halt construction. He subsequently attended a meeting of shareholders on 12th September 2024, where eight of the twelve members reportedly disavowed any authorization of legal action against him. According to him, the meeting's minutes reflect that the shareholders agreed no further legal proceedings should continue. He further claimed that upon stopping the works, significant damage occurred to the interior and exterior of Townhouse No. 12 due to exposure to rainfall, leading to loss of property and expenses incurred to rehouse his elderly mother. Photographs and correspondence from his contractor were produced to corroborate this account.
61. Mr. Thomas further asserted that the Claimants falsely alleged the existence of a previous injunction or court order against the earlier owners. His attorneys conducted searches through the Civil Court Office and confirmed that no such record existed. He also reported the matter to the Fraud Squad, alleging that the legal action had been commenced without East Park Villas Limited's authorization. He produced correspondence and minutes showing that a new Board later approved his request to resume internal repairs in February 2025. He maintained that no valid Board resolution had ever been passed authorizing the initiation of proceedings against him and that the continuation of the matter has caused him severe emotional and financial hardship, including unanticipated travel from the United Kingdom and loss of prepaid construction expenses.
62. Under cross-examination, Dr. Ashok Thomas confirmed that he and his wife owned Townhouse No. 12 at East Park Villas under Deed No. 424 of 1986 and that their sublease was governed by the Head Lease, Deed No. 9179 of 1981. He accepted that under the Sixth Schedule, clause 10, he was not permitted to make any alterations to the demised premises without the written approval of East Park Villas Limited and without first obtaining all necessary planning approvals and licences. When asked directly whether

such written approval had been obtained before commencing the external works, Dr. Thomas conceded that no written approval was given by East Park Villas for the external construction. He clarified that he had only received written consent for interior works earlier that year.

63. Counsel then questioned him about the commencement of the external construction, which began on 27th August 2024. Dr. Thomas admitted that he did not have written approval for those works and that his application to Town and Country Planning was made after the construction had already commenced. He explained that while he began procuring contractors in early 2024, he did not have detailed drawings or a formal written scope of works, describing the arrangements as largely verbal and communicated over WhatsApp. He admitted that those communications were not included in his witness statement or in evidence.
64. When pressed on the scope of the works, Dr. Thomas initially said they were limited to repairing a defective roof. However, when shown photographs depicting demolished walls, deep trenches, and new blockwork, he accepted that the majority of the structure to the rear of the townhouse had been demolished and rebuilt. He acknowledged that new walls were constructed adjoining the boundary wall and that these works impeded access across a section of the common property. He further accepted that the structure extended into what was previously common ground, thereby restricting passage behind the units.
65. Counsel referred him to the minutes of a meeting held on 4th January 1987, which he had cited as the basis for his belief that reconstruction was permissible. Upon reviewing them, Dr. Thomas accepted that the minutes merely recorded an agreement not to pursue demolition of the existing back structure and did not grant approval for rebuilding a new structure. He admitted that he had nevertheless demolished the old structure and proceeded with new construction, relying only on his interpretation of that earlier resolution.
66. He was then shown correspondence dated 30th November 2024 from the new board of East Park Villas instructing counsel to “pause” all legal work. Dr. Thomas accepted that nowhere in that letter did the board use the word “withdraw,” contrary to his earlier evidence. He also confirmed that at the time of commencing the works, no Town and Country Planning approval had been obtained, and acknowledged that the first application was submitted only after the commencement of proceedings. When asked about the requirements of the Town and Country Planning Act, he conceded that he later learned approval would be required if the rebuilding altered the exterior structure, and that by that definition, the external works fell within those provisions.

67. Counsel further highlighted inconsistencies between his testimony and his pleadings, noting that while he had described the project as “repairs,” he admitted to rebuilding three walls of the structure. Dr. Thomas accepted that nearly the entire structure was reconstructed with new materials but maintained that the floor slab remained intact. He further accepted that rubble and debris from the demolished structure had temporarily occupied the common area, though he insisted it was later cleared.
68. When questioned by the Court, Dr. Thomas acknowledged that the rear structure was built on common property, that no written approval was obtained from East Park Villas Limited, and that his Town and Country application was submitted post facto. The Court also asked whether he understood that, under clause J of the Head Lease, the owner of any townhouse could enforce the covenants against another. He replied that while he was not versed in company law, it appeared to him that other townhouse owners could indeed bring proceedings in respect of breaches.
69. His evidence as a whole revealed a consistent effort to characterize the works as mere repairs, though under detailed questioning by both counsel and the Court, he accepted that substantial demolition and rebuilding had taken place, that no written or planning approval preceded the works, and that construction extended onto the common property, thereby restricting access and contravening the restrictive covenants under the Head Lease.

Issues for determination

70. The principal issue for determination is whether the Defendants’ construction works constitute a breach of the Head Lease. This depends on the determination of the following:
 - a. Whether the First Claimant, East Park Villas Limited, was duly authorized in accordance with its Bye-Laws and the Companies Act to commence these proceedings;
 - b. Whether the Defendants obtained prior written permission or consent from the Lessor, including the Claimants, to undertake the works;
 - c. Whether the Defendants was required to obtain Town and Country Planning or other regulatory approvals before commencing construction and if so whether in breach of the covenant;

- d. Whether the Claimants are estopped from pursuing this action by reason of prior acquiescence, inaction, or representations regarding earlier structures at the property; and
- e. If a breach is established, what form of relief is appropriate in the circumstances.

Applicable Law and Analysis

- 71. The issues for determination in this case concern the enforceability of restrictive covenants contained in the Head Lease, the necessity of obtaining written consent prior to undertaking alterations, the authority of the management company to institute proceedings, and the application of equitable doctrines such as acquiescence, waiver, and proportionality in the grant of equitable relief. The Privy Council decisions in ***Singh v Rainbow Court Townhouses Ltd [2018] UKPC 19*** and ***Rolle and Another v Town Court Management Co (Bahamas) [2025] UKPC 16*** provide clear and authoritative guidance on these questions.

Restrictive Covenants within a Building Scheme and/or Housing Development Concept

- 72. Restrictive covenants in townhouse and condominium developments serve the collective function of maintaining architectural uniformity, preserving aesthetic standards, and safeguarding the amenities of the community. These covenants operate not merely as private bargains but as integral mechanisms for regulating the use and enjoyment of property within a shared development.
- 73. In ***Singh v Rainbow Court Townhouses Ltd (supra)***, the Privy Council described the background of the Rainbow Court development as one in which “the leaseholds within the development were being sold under a building scheme, in which the covenants would be mutually enforceable” (see para [2] of the judgment). The lease therein contained covenants in the Fifth Schedule, which required, that the lessee was “not to make any alterations or additions in or on the property without first obtaining the lessor’s written approval,” and at paragraph that the lessee was “to comply with any reasonable rules and regulations of the company” (see para [3] of the judgment).
- 74. The appellant in ***Singh v Rainbow Court Townhouses Ltd (supra)*** had undertaken structural modifications, including the erection of four large pillars, without obtaining the requisite written approval. The Privy Council referred to the Trial Judge’s determination that those alterations “completely changed the appearance of the building, detracting from the uniformity of the Community” (para [19] of the judgment). The Board reiterated that the purpose of restrictive covenants in such developments is preventative rather than compensatory, citing that “damages are no remedy because the object of the

covenant is not to make persons pay for committing breaches but to prevent these breaches” (para [32] of the judgment).

75. It is this Court’s view that the effect of the decision is to affirm that covenants of this kind are to be strictly enforced, their observance being necessary to preserve the character and design of the collective development.
76. Moreover, the Privy Council in ***Rolle and another v Town Court Management Co (Bahamas)*** (*supra*) reached a similar conclusion when considering the condominium regime under Bahamian law. Lord Leggatt explained that the statutory and contractual framework governing multi-unit developments was 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” (para [15] of the judgment). It follows that such schemes are designed to secure collective responsibility and cohesion, and that observance of the governing instruments is fundamental to their orderly administration.
77. In the circumstances at bar, the Head Lease Deed No. 9179 of 1982, establishes a comprehensive framework of covenants and easements regulating the use, enjoyment, and alteration of the several townhouses within the East Park Villas development. It is the principal instrument that defines the reciprocal rights and obligations of all lessees, including the Defendants, and the management company as Lessor. The purpose of these covenants, viewed collectively, is to preserve architectural uniformity, maintain the character and amenities of the property, and ensure orderly administration through the Lessor’s control over alterations and common areas.
78. The definitional clauses in Part B of the Deed are significant for understanding the reach of the obligations imposed. Clause (ii) provides that the term “lessees” includes their respective successors in title. Accordingly, the covenants bind not only the original lessees but also any subsequent owners or occupiers, such as the Defendants, as successors in title to Townhouse No. 12. Clause (v) defines “the reserved property” as comprising the gardens, lawns, pleasure grounds, drives, paths, forecourts, and car parking areas (other than those allocated to particular townhouses) and “any other areas not forming a portion of the Townhouses.” This ensures that the common property of the development remains subject to collective control. Clause (vi) defines “the Demised Premises” to include not merely the townhouse structure but also the rights, easements, and appurtenances described in the Fourth Schedule. Thus, the demised premises are

circumscribed by a network of interdependent rights and obligations extending to and from the common property.

79. Clause J of the operative part of the Deed reinforces the building scheme character of the development. It expressly states that upon any transfer of a townhouse, the incoming owner must enter into a covenant with the Lessor “to observe and perform in relation to that Townhouse stipulations in the terms set out in the Sixth Schedule,” so that each owner may enforce those stipulations against the others. The reciprocal nature of this provision is critical: it creates mutually enforceable obligations among townhouse owners and ensures that the restrictive covenants run with the land. Clause 2 further provides that each lessee covenants with the Lessor to observe and perform the obligations in the Sixth Schedule, thereby giving the Lessor direct enforcement rights against any lessee in breach.
80. The Second Schedule describes the reserved property as including the communal gardens, lawns, drives, and car parks, areas whose maintenance and use are to remain under the Lessor’s control for the benefit of all owners. These areas are by definition excluded from the demised premises of any individual townhouse, and no owner may appropriate or interfere with them without permission.
81. The Fourth Schedule reinforces the mutual enforceability of covenants and the shared rights of access and use. Paragraph 3 confers on each lessee the benefit of covenants entered into by other townhouse owners, to the extent that those covenants are intended to benefit the demised premises. Paragraph 5 expressly grants to each lessee “the right to use in common with the owners and occupiers of all other Townhouses and their visitors the gardens, pleasure grounds, drives, paths, forecourts and parking areas (other than those allocated to a particular Townhouse)” subject to the reasonable rules and regulations prescribed by the Lessor. These provisions collectively preserve the communal nature of the reserved property and prohibit any unilateral encroachment or modification by individual owners.
82. The Sixth Schedule, which contains the operative restrictive covenants, sets out the specific limitations relevant to this dispute. Clause 6 regulates access for repairs and works, requiring that any lessee who needs to enter another part of the property to perform repairs must give reasonable written notice, at least forty-eight hours except in urgent cases, and must “act carefully and reasonably, doing as little damage as possible” and “making good all damage done.” This clause presupposes that the works are lawful and carried out in accordance with the Deed, and it prevents arbitrary interference with common or neighbouring property.

83. Clause 10 imposes one of the central restrictive covenants of the development. It provides that ***“the Lessee shall not make any alteration in the Demised Premises without the approval in writing of the Lessor to the plans and specifications thereof.”*** It further mandates that ***the Lessee obtain “all licences, planning permissions and other things necessary for the lawful carrying out of such alterations”*** and comply with all applicable bye-laws and regulations. This covenant serves both a procedural and substantive function: it ensures that no structural or material alteration to any townhouse occurs without the prior written consent of the management company as Lessor, and it requires compliance with public law planning controls. The covenant thus guards the architectural integrity of the development and the rights of other owners to a consistent and safe built environment.
84. Clause 11 supplements this by prohibiting any act or omission that may constitute a ***“nuisance or annoyance or cause damage or inconvenience to the Lessor or to the owner or occupier of any other Townhouse.”*** It also obliges the Lessee to indemnify the Lessor against costs incurred in abating a nuisance or complying with notices served by competent authorities. This covenant squarely addresses interference with common property and the quiet enjoyment of other owners.
85. Clause 13 reinforces compliance with statutory planning controls by providing that the Lessee shall not do any act ***“which contravenes the provisions of the Town and Country Planning Act”*** and must indemnify the Lessor against any liabilities arising from such contravention. The effect of this clause is to make observance of planning law a contractual condition of occupancy.
86. Clause 22 introduces a flexible management mechanism, requiring each lessee to “comply with and observe any reasonable rules or regulations which the Lessor may... make to govern the use of the Property.” These rules may be restrictive of acts “detrimental to the character or amenities of the Property or the safety of persons using the Property.” This provision empowers the management company to promulgate supplementary rules for the common good and reinforces the binding nature of the covenants.
87. The Seventh Schedule provides that the Lessor shall keep the Reserved property and all facilities fixtures and fittings therein and additions thereto in a good and tenable state of repair...PROVIDED that nothing therein contained shall prejudice the Lessor’s right to recover, from the Lessee or any other person the amount or value of any loss or damage suggested by or caused to the Lessor or to the Reserved property by the negligence or other wrongful act or default of the Lessee or such other person.

88. Finally, the Eighth Schedule specifies that all complaints and applications concerning repairs and other matters must be made in writing to the Lessor or its agents. This procedural requirement underscores that all communication regarding alterations or repairs must pass through formal channels to ensure accountability and record keeping.
89. Taken together, these provisions form a coherent scheme of obligations typical of townhouse developments. They establish (i) that the Defendants, as successors in title to the original lessees, are bound by the covenants; (ii) that any alteration or addition to the demised premises requires the Lessor's prior written approval and compliance with statutory planning requirements; and (iii) that no act may be undertaken that encroaches upon the reserved property, causes nuisance or inconvenience, or alters the character or amenities of the development.
90. Of note, the Defendants have admitted that the covenants apply to them but contend that, owing to the past conduct of the parties as per paragraph 19 of the Amended Defence and Counterclaim, in response to the Claimants' paragraph 18 of the Amended Statement of Case.

Authority of the Management Company

91. A central question in the present case concerns the authority of the management company to institute proceedings to enforce the covenants. That question was considered in ***Singh v Rainbow Court Townhouses Ltd (supra)***, where the lessor had executed a deed "appointing the Management Company as its agent to fulfil its obligations under the leases of the townhouses and enforce their terms, but which did not transfer any interest in the property which remained vested in the lessor" (see para [3] of the judgment).
92. The appellant there contended that, as the company did not hold the reversionary interest, it lacked standing. The Privy Council rejected that argument, observing that counsel was technically right. However, the point was not taken in the High Court, or in the Court of Appeal. The Board pointed out that in any event it could and should have been disposed of summarily by the Court of Appeal. The defect had caused no prejudice and could have been corrected by amendment. It was accordingly deemed to be "without merit" (see para [26]). This establishes that where a management company has been duly appointed by the lessor to enforce the covenants on its behalf, proceedings brought in its name are properly maintainable, any technical irregularity being curable by amendment.
93. The Privy Council in ***Rolle and another v Town Court Management Co (Bahamas) (supra)*** addressed the scope of a condominium management body's authority under its statutory

and contractual framework. Section 14(2)(g) of the Law of Property and Conveyancing (Condominium) Act and clause 17 of the relevant Declaration conferred on the management body “the power to delegate all or any of its powers and duties to any company firm or person of its choice” (para [14] of the judgment). Lord Leggatt stated that “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” and that “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)” (see para [16] of the judgment).

94. The Board noted that the contrary argument as “wholly illogical” and held that “no one could reasonably doubt what clause 17 of the Declaration means” (see para [17] of the judgment).
95. It follows from these authorities that where the governing instruments expressly empower a management company or association to act or to delegate enforcement functions, such authority is validly exercisable.
96. In this case, the First Claimant, as the East Park Villas Limited, is an express party to the Lease with the Defendants. The First Claimant is seised in fee simple in possession of the Property with a right of way subject to the restrictions together with easements (see H of the Head Lease). The First Claimant by the Deed of Lease is the party who demised the premises to the Defendants and reserved rights to Company including the areas upon which the Defendants sought to build a structure. The Seventh Schedule specifically provides for the Lessor’s right to recover, from the Lessee or any other person the amount or value of any loss or damage suggested by or caused to the Lessor or to the Reserved property by the negligence or other wrongful act or default of the Lessee or such other person. The First Claimant is thereby vested with the authority to enforce the covenants contained in the Lease.
97. The Defendant’s primary contention is that the First Claimant did not properly authorize the institution of these proceedings and that, as a consequence, the claim is invalid. The issue, therefore, is whether the company acted within the limits of its constitution and delegated powers. This is a factual inquiry to be resolved by construing the relevant evidence in this matter.
98. Section 60 of the Companies Act states that the management of the business and affairs of the Company is vested exclusively in the Board of Directors. This is echoed in By Law 4.1 of the First Claimant. There is no by law or shareholder agreement to the contrary

produced by the Defendants. The Board of Directors therefore is the body that must authorize the commencement of the proceedings.

99. The evidence shows that at the time the claim was commenced, the First Claimant had three directors: Ms. Rhea Rahman (Director), Dr. Shyam Rahman (Secretary), and Dr. Satesh Bissram (Chairman of the Board). The evidence demonstrates that the directors of the First Claimant expressly authorized Mr. Naraynsingh to engage Counsel and pursue injunctive relief to restrain the Defendants' works. Ms. Rahman testified that on 4th September 2024, after multiple unsuccessful attempts to secure cooperation from Mr. Thomas, she consented to the use of the company's stamp for court documents and executed an authorization letter. She later confirmed this authorization to the police when queries arose regarding the stamp's use. Mr. Naraynsingh corroborated that he acted pursuant to written authorization provided by the Rahmans.
100. In contrast, Dr. Satesh Bissram maintained that he had approved only the seeking of legal advice and not the initiation of proceedings. However, the company's internal documentation, as well as surrounding communications, indicate that he and other directors supported immediate injunctive action once the Defendants refused to cease construction.
101. In an email dated 3rd September 2024, sent on behalf of Dr. Shyam Rahman (Secretary) to Dr. Bissram, he was expressly asked: ***"Dr Rahman would like to gain your approval as Chairman of the Board to seek a legal court order against further construction works at the above address."*** Dr. Bissram responded simply: "Approved."
102. Further, WhatsApp correspondence between Dr. Bissram and tenant Ms. Niala Ojar records her stating: "Theresa, lots of activity and Ashok is there. He is not stopping the work so pre-action protocol letter is a waste of precious time and money. Robin picked up a copy of the lease and is on his way to Attorneys for injunction." Dr. Bissram replied with a thumbs-up emoji. In cross-examination, he accepted that this signified his approval. This evidences that Dr. Bissram understood an injunction—not merely a cease-and-desist letter—was being pursued, and that he expressly assented to it.
103. The purported minutes of the shareholders' meeting, prepared by Dr. Bissram himself, record that ***"they each explained that, while they may have given authority at the beginning of events to file an injunction, it was done out of haste..."*** [emphasis added].
104. Additionally, the audio recording of that meeting reflects Dr. Bissram stating unequivocally that he did authorize legal action at the outset.

105. Taking the evidence as a whole, and noting that the Defendant has produced no evidence to the contrary, the Court finds, on a balance of probabilities, that the commencement of the injunction proceedings and this claim was duly authorized by the First Claimant and is validly brought.
106. In any event, the Court previously indicated to the parties that even if there were any defect in the First Claimant's authorization, the claim would not fail, as the Second Claimant was independently entitled to pursue the relief sought in its own right.
107. Further, pursuant to the principle in ***Singh v Rainbow Court Townhouses Ltd*** (supra), any procedural irregularity in the institution of proceedings does not deprive the Court of jurisdiction where no prejudice is occasioned and where such irregularity is capable of being cured by amendment. The evidence demonstrates that the litigation was pursued for the collective benefit of all proprietors, including the Second Claimant, under proper authorization. It therefore falls squarely within the legitimate management functions of the company and was appropriately approved.

The Requirement for Written Consent

108. A consistent principle arising from the abovementioned decisions is the strict requirement of written consent prior to any alteration or addition. In ***Singh v Rainbow Court Townhouses Ltd (supra)***, paragraph 9 of the Fifth Schedule to the lease required that written approval be obtained before any alteration or addition was made. The appellant, having undertaken construction without written approval, contended that oral discussions with two company officers sufficed.
109. The Privy Council rejected that contention unequivocally. It held that "the mere failure of two officers to make immediate objection in October 2014 when notified of works due to start within about a week, without any detailed information of their nature cannot be interpreted as a representation of any kind on behalf of the company" (see para [33] of the judgment). It also observed that "the company had not been 'unduly insistent' on the observance of the covenants, nor had it made its business to conduct inquisitorial examinations unless a matter was drawn to its attention by complaints of neighbours or otherwise" (para [32] of the judgment).
110. The decision confirms that where a lease stipulates written approval, compliance with that requirement is mandatory. Oral assurance, silence, or inaction cannot be treated as approval. The covenant serves the essential purpose of ensuring certainty in management and preserving uniformity across the development.

111. The reasoning in *Rolle and another v Town Court Management Co (Bahamas) (supra)* reinforces this approach. The Board emphasized that “the clear and unambiguous effect” of express provisions in the governing instruments must be applied as written (para [16]). It follows that the requirement for written consent is not a procedural formality but a substantive condition precedent to lawful alteration.
112. The Head Lease (Deed No. 9179 of 1982) imposed an express covenant prohibiting alterations or additions without the lessor’s prior written approval. The Defendants admitted that no written consent was obtained but argued that verbal discussions with the former chairman, Mr. Henry Rahaman, and the absence of objection amounted to acquiescence.
113. The testimony of Ms. Ojar and Ms. Rahman shows unequivocally that no formal plans or written requests were ever presented to the Board. Both witnesses recounted that the Defendants informed them only that the roof would be replaced, yet the entire annex was demolished and new steel-reinforced walls erected. The physical evidence and photographs confirm that the new structure exceeded the footprint of the original annex, extended to within inches of the boundary wall, and materially altered the façade of the development.
114. Under *Singh v Rainbow Court Townhouses Ltd (supra)* at [33], mere notice to officers or informal discussion cannot amount to “written approval” or to any binding representation of consent. The covenant’s purpose is to secure uniformity and prevent precisely this type of unilateral construction. The absence of a contemporaneous written authorization and submission of plans to the Board is therefore dispositive: the Defendants were in breach.

Planning Permission

115. This Court is of the view that compliance or non-compliance with planning requirements under the public law regime does not determine private rights under restrictive covenants. The planning framework serves the public interest in regulating land use, whereas covenants protect private contractual rights among proprietors.
116. It follows that the grant of planning permission does not override private obligations. The two regimes operate independently. A lessee who undertakes works without planning permission may face both public enforcement and private enforcement under the lease. Conversely, even where planning permission is granted, a lessee may still be in breach of covenant if written consent from the lessor was not obtained.

117. The First Defendant accepted in cross-examination that he had no Town and Country Planning approval and that he applied only after commencing the works. His first application was rejected, requiring resubmission. To date, no approval has been granted. The Defendants rely on section 8(2)(a) of the Town and Country Planning Act, contending that the works were minor and did not require permission, and further that the Planning Division took no enforcement action. Firstly, the absence of public enforcement is irrelevant to the enforceability of private covenants.
118. Secondly, the First Defendant contention that the works were merely internal repairs that did not alter the façade of the building to this Court found was wholly incredible.
119. Section 8 of the Town and Country Planning Act Chapter 35:01 provides:
8. (1) Subject to the provisions of this section and to the following provisions of this Act permission shall be required under this Part for any development of land that is carried out after the commencement of this Act.
- (2) In this Act, except where the context otherwise requires, **the expression “development” means the carrying out of building, engineering, mining or other operations in, on, over or under any land, the making of any material change in the use of any buildings or other land,** or the subdivision of any land, except that the following operations or uses of land shall not be deemed for the purposes of this Act to involve development of the land, that is to say—
- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not materially affect the external appearance of the building; [emphasis mine]**
120. The evidence of Ms. Ojar and Mr. Naraynsingh establishes that the works extended into common property or reserved areas, obstructed access to electrical panels, digging of trenches and diverted wastewater on to adjoining land—actions far exceeding mere internal alterations. The evidence including photographs shows that Defendants demolished an already unauthorized structure, removed walls, excavated trenches, and extended the building’s footprint. He admitted that steel pillars were required to support the new roofing. The Defendants’ own planning drawings depict a substantial new self-contained apartment unit. For the First Defendant to assert that such extensive construction was “internal” or did not affect the exterior is wholly untenable, and an attempt to mislead both the parties and the Court.

121. The Court finds that the works undertaken by the Defendants clearly required Town and Country Planning approval. Even if the Planning Division did not intervene, this does not excuse the Defendants' breach of covenant. The Court's task is to assess compliance with the lease, not public enforcement policy. The evidence clearly establishes that the Defendants undertook substantial reconstruction without obtaining any of the required consents.
122. The Defendants therefore breached the covenants which required such before conducting those works.

Other Covenant Breaches

123. The evidence establishes that the structure erected by the Defendants was constructed on the common area—described in the Head Lease as the “Reserved Area”—which the First Defendant expressly accepted. The First Defendant also admitted that construction materials and rubble were deposited on this common area. Under the Fourth Schedule of the Lease, all residents and their visitors are entitled to use the gardens, lawns, pleasure grounds, paths, forecourts and unassigned parking spaces for their **common enjoyment**. The Reserved Area is therefore for the benefit of all occupiers and is not for the exclusive use of the Defendants.
124. Further, under the Seventh Schedule, the Lessor is entitled to recover from the Lessee, or any other person, the amount or value of any loss or damage caused to the Lessor or to the Reserved Property by the negligence or other wrongful act or default of the Lessee. The construction activity undertaken by the Defendants on the common area/Reserved Property, together with the placement of rubble and materials obstructing pathways, constituted both a **nuisance** to the other residents and a **breach of the covenants** of the Lease.

Acquiescence, Waiver and Estoppel

125. The equitable doctrines of acquiescence, waiver, and estoppel are recognised as potential defences to enforcement, though they apply only in limited circumstances. The point remains that equity will not permit a person to act inconsistently with their prior representations or conduct if it would be unjust to do so.
126. The leading modern application of these doctrines in the context of restrictive covenants remains that of *Singh v Rainbow Court Townhouses Ltd (supra)*. The appellant argued that the management company's failure to object promptly amounted to acquiescence. In addressing this contention, the Privy Council referred to the statement of Farwell J in *Chatsworth Estates Co v Fewell [1931] 1 Ch 224* that “it is in all cases a question of

degree. It is in many ways analogous to the doctrine of estoppel, and I think it is a fair test to treat it in that way and ask, 'Have the plaintiffs by their acts and omissions represented to the defendant that the covenants are no longer enforceable...?'" (see para [28] of the judgment).

127. Applying that test, the Privy Council found no such representation, holding that “the mere failure of two officers to make immediate objection... cannot be interpreted as a representation of any kind on behalf of the company” (see para [33] of the judgment) and that the existence of comparable breaches may be relevant not to liability but to the exercise of the court’s discretion as to relief (see para [34]). The Board’s reasoning establishes that mere delay, silence, or tolerance of other breaches does not give rise to waiver or estoppel. This court is of the view that a defendant is obliged to show clear and unequivocal conduct by the enforcing party amounting to an assurance that the covenant would not be enforced, and reliance to their detriment.
128. The Defendants contended that prior inaction by the company, including tolerance of an earlier annex built by Dr. Abraham, precludes present enforcement. The testimony of Ms. Ojar clarifies that the earlier unauthorized structure was the subject of court proceedings decades ago and that its continued existence was an historical anomaly. The minutes of the meeting of the First Claimant was that a decision was taken not to demolish the unauthorized structure. There was no consent for anything else. The Defendants actually went against the actual decision of the First Claimant and demolished the structure that was there. Further, that long-standing failure in not demolishing the unauthorized structure does not create an estoppel with respect to new and materially different works.
129. The Privy Council in ***Singh v Rainbow Court Townhouses Ltd (supra)*** at [28]–[34] reaffirmed that mere silence or delay cannot constitute acquiescence absent clear representation that covenants would not be enforced. Here, the evidence shows prompt objection once the new demolition began. Ms. Ojar contacted the directors immediately in late August 2024, and by early September, injunction proceedings were underway. Far from acquiescing, the management company acted expeditiously. The defence of waiver or estoppel therefore fails.

Equitable Relief

130. The Court’s discretion in granting equitable relief must be exercised proportionately and with regard to the object of the covenant. In ***Singh v Rainbow Court Townhouses Ltd (supra)***, while the trial judge correctly found a breach, the Privy Council held that the relief granted was overly broad. Referring to ***Charrington v Simons & Co Ltd [1970] 1***

WLR 725 and *Shepherd Homes Ltd v Sandham [1971] Ch 340*, the Board reiterated Buckley J's formulation at paragraph 29 that:

"Different considerations may, I think, arise in a case where the court has to consider whether a defendant should be compelled by a mandatory order to remedy a breach of contract which he has committed from those which would arise if the question were whether the court should restrain a threatened breach of contract. To the latter case the principle enunciated by Lord Cairns LC in Doherty v Allman, 3 App Cas 709, 710, 720, may apply in its full rigour. Where a mandatory order is sought the court must consider whether in the circumstances as they exist after the breach a mandatory order, and, if so, what kind of mandatory order, will produce a fair result. In this connection the court must, in my judgment, take into consideration amongst other relevant circumstances the benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant. A plaintiff should not, of course, be deprived of relief to which he is justly entitled merely because it would be disadvantageous to the defendant. On the other hand, he should not be permitted to insist on a form of relief which will confer no appreciable benefit on himself and will be materially detrimental to the defendant."

131. It is patently clear that equitable relief requires a balancing exercise.
132. Equally, the taken in *Rolle and another v Town Court Management Co (Bahamas) (supra)* is consistent with this reasoning. Although the central issue in that case concerned the interpretation of the governing instruments rather than proportionality, the Board reaffirmed that where the contractual framework is clear, relief must be granted and applied according to its terms, not expanded or diminished by equitable discretion.
133. The photographs and measurements adduced by Mr. Naraynsingh demonstrate significant encroachment upon common areas and alteration of the uniform façade of the development. There was also hindrance and access to the electrical box which serviced several of the townhouses. In *Singh v Rainbow Court Townhouses Ltd (supra)* at [29], citing *Shepherd Homes Ltd v Sandham [1971] Ch 340*, Buckley J emphasized that the court must weigh the benefit of an injunction to the plaintiff against the detriment to the defendant, ensuring that relief is proportionate to the breach.

134. In the present case, the breach affects the collective rights of all unit owners to the preservation of architectural uniformity and safe access to essential infrastructure. The Defendants undertook the works with full knowledge of the covenant and in defiance of warnings. The benefit of restoration or removal outweighs any hardship claimed, particularly as the hardship is self-inflicted. The equitable balance therefore favours enforcement through injunctive relief requiring removal or modification of the offending structure.

Nominal Damages

135. As the First Claimant has not proven any actual pecuniary loss, the Court is minded to award nominal damages only.
136. Nominal damages do not equate to “minimal” or “insignificant” damages. The quantum recoverable in circumstances where the claimant has proven the infringement of a legal right but not the value of any resulting loss depends on the facts of each case.
137. In the recent case of ***Civil Appeal No. CA P-274 of 2020 North Plant LPG Cooperative Society Limited v Continental Corporation Limited*** (February 2024) the Court of Appeal had cause to look at the issue of nominal damages. The claim was brought by Continental against North Plant alleging negligence by the servants or agents of North Plant in the delivery, control and management of liquid gas from motor vehicle TCU 7612 (the truck) to El Pecos. Continental quantified the sum of its losses in its Statement of Case in the sum of \$2,101,794.64. The judge found North Plant liable in negligence and awarded Continental nominal damages in the sum of \$600,000.00, having found that the sum claimed as specific damages was not proved. Justice Boodoosingh JA (as he then was) said:

38. It follows from the judgment of Mohammed JA that in this jurisdiction awards of nominal damages have yielded a different range from England and Wales and peculiar to the circumstances here. In England and Wales the sums typically appear to be in the range of £2 to £5. While the Pan Trinbago case was not a claim for negligence, the general principles stated are apt. The review of cases undertaken in the Pan Trinbago judgment has shown usual awards in the range of \$5,000.00 to \$25,000.00. In some instances awards in the High Court have gone up to \$100,000.00 (*Total Solutions Surveying Services Limited v Water and Sewage Authority*, CV 2009 – 03269) and even to \$250,000.00 and \$400,000.00 (*RBTT Merchant Bank v Reed Monza Trinidad Limited*, CV 2010-3699). Without us pronouncing on the justification of those awards, as nominal damages figures,

as they are not before us, the awards of \$250,000.00 and \$400,000.00 appear to be clear outliers.

....

41. As noted by Mohammed JA nominal damages are awarded at the discretion of the court. The question remains, however, can the figure of \$600,000.00 be justified as nominal damages. Trespass cases have attracted award of \$5,000.00 to \$40,000.00 in recent times. In respect of commercial matters, including contracts, awards have gone to \$100,000.00 and even to \$250,000.00. As noted the figures of \$250,000.00 and \$400,000.00 appear to be outliers, but the circumstances of those awards are not before this court.

42. While context and the evidence will dictate what would be reasonable figure to award for nominal damages in a given case, in this jurisdiction the figure of \$600,000.00 is significantly outside of the range of what has thus far been contemplated by nominal damages. By definition, nominal damages remain for circumstances where there is proof of the infringement of a legal right but no loss or, as occurred here, where the judge found the evidence led did not prove the amount of damages claimed. No adequate case has been made for going so far out of the range given what nominal damages are meant to represent. There has been no justification for going so far out of the range and the judge erred in doing so. A figure of \$600,000.00 for nominal damages cannot be justified on principle, authority or precedent in this jurisdiction. Such higher sums should probably better be regarded as the court finding a lower level of damages was proved than what was claimed, rather than as being representative of an award of nominal damages.

43. Given what an award of nominal damages is supposed to represent and balancing that with the obvious significant loss sustained because of this explosion, an award of \$50,000 is the highest award this court can consider to be justifiable in the circumstances of this case. The judge's order on nominal damages is therefore, varied from \$600,000.00 to the sum of \$50,000.00. The appeal is otherwise dismissed.

138. In assessing nominal damages in this case, I have considered that the breaches relate to covenants governing the use of common property, the creation of nuisance, the prolonged duration of the breaches, and what I described as the Defendants' bold-faced disregard of repeated complaints and warnings. The conduct caused inconvenience to

the Claimants and other residents and continued for an extended period. In all the circumstances, an award of \$10,000.00 is reasonable and proportionate.

Disposal

139. Having regard to the above I will grant Judgment in favour of the Claimants and dismiss the Defendants' counterclaim.

[1] Judgment for the Claimants against the Defendants

[2] It is declared that the construction of the building, annexure, structure and ground works carried out by the Defendants to the exterior of Townhouse 12 and on the common grounds/Reserved Property at East Park Villas, Maruana Road, Valsayn South, were in contravention of the covenants under the Lease and were unlawful.

[3] The Defendants, whether by themselves, their servants or agents, are restrained from constructing or erecting any buildings, annexures, structures or undertaking any ground works to the outside of Townhouse 12 or on the common grounds/Reserved Property, and from depositing materials or rubble thereon, and from interfering with the Claimants' and other occupiers' use and enjoyment of the common grounds/Reserved Property, and from committing any nuisance.

[4] The Defendants, whether by themselves, their servants, agents or workmen, shall, after consultation with the First Claimant regarding the scope of works, remove all structures/annexures/buildings erected outside Townhouse 12 that do not form part of the demised premises as defined in the Lease, fill in and restore all open trenches, and remove all materials and rubble.

[5] The Defendants shall, at their own cost, restore the pathway and common area/Reserved Property outside Townhouse 12 in a workmanlike manner within three (3) months of this judgment. In default, the First Claimant is authorised to carry out the works, the cost of which shall be deemed a debt due and owing by the Defendants to the First Claimant.

[6] The Defendants shall pay nominal damages to the First Claimant in the sum of \$10,000.00.

[7] The Defendants shall pay prescribed costs of the Claim to each Claimant, assessed at \$14,000.00 each.

[8] The Defendants shall pay prescribed costs of the Counterclaim to each Claimant, assessed at \$14,000.00 each.

[9] The Defendants shall pay the costs of the Injunction, to be assessed by the Registrar in default of agreement.

/s/ Westmin James
Westmin R.A. James
Judge