

Date: January 24, 2025

Subject: *Claims against the Apes Hill Club Homeowners Association Inc (“HOA”), Apes Hill (Barbados) Inc (“Controlling Member”), the current Directors of the HOA appointed by the Controlling Member (“Directors”), and the Garden Wall Villa Association Inc (“GWVA”)*

Dear Fellow Members of the HOA:

On 3 February 2020, the Controlling Member purchased at foreclosure all the property owned by the Apes Hill Development SRL (“Developer”) in the Apes Hill Club Development (“Development”), thereby becoming a member of the HOA, with the same rights and privileges we are all now supposed to enjoy.

Except that on that same day, the Controlling Member also received on behalf of the Developer a document entitled Deed of Assignment of Developer Rights, Title, and Interests For Apes Hill Club Development (“Assignment”) without the Controlling Member assuming any of the liabilities of the Developer to the HOA. The Assignment erroneously stated that the Turnover Date had not yet occurred and purported to grant to the Controlling Member the right to appoint the Directors of the HOA.

The 2006 Articles of Incorporation and Bylaws of the HOA, however, do not grant the Developer the right to appoint the Directors of the HOA and the 2006 Rules of the HOA authorize the assignment of the Developer Rights to a new developer only if the obligations of the Developer to HOA are assumed by the new developer. The Bylaws of the HOA also provide that the Turnover Date is the date the Developer sells its last residential lot in the Development and that on the Turnover Date, the Developer must convey the relevant Common Property in the Development to the HOA and GWVA.

Under cover of the Assignment, the Controlling Member thereafter took full control of the HOA and appointed its Directors of the HOA who attempted, amongst other things, to adopt new Rules for the HOA on 29 June 2021 attempting to make the Controlling Member the Developer under the Bylaws of the HOA and changing the Turnover Date in the Bylaws from the date the Developer completed the sale of its last residential lot in the Development, 3 February 2020, to the date the Controlling Member sells its last residential lot in the Development.

It is anticipated that on 4 February 2025, five years after the Turnover Date, the High Court will set down for trial the two preliminary issues to be addressed now before the Court: (1) Whether the Controlling Member is a developer within the meaning of the Bylaws of the HOA and the GWVA; and (2) whether the Turnover Date as defined in the Bylaws of the HOA and the GWVA has passed.

To date the GWVA has not appeared in this proceeding, and the HOA, the Directors and the Controlling Member have only relied on the following documents in support of their defence to the claims:

The Assignment.

The Bylaws of the HOA.

The purported 29 June 2021 Rules of the HOA.

An email dated 9 December 2022 from one of the Directors, Sunil Chatrani, to the members of the HOA stating, among other things, that the deadline for the submission of completed membership applications in the Apes Hill Club has been further extended from 1 October 2021 to 23 December 2022.

Agreements for the Sale of lots dated 1 February 2013 between the Developer and Yvonne Lankry and Jean-Louis Lankry and 4 July 2016 between the Developer and Charles Pattison and Penelope Ann Newman.

The Controlling Member has not conveyed to the HOA and GWVA the relevant Common Property but has mortgaged that Common Property to a lender to secure its outstanding obligations to the lender. The HOA and its Directors have never held a meeting of HOA members at which the business of the HOA could be conducted by its members or issued financial statements containing the approving opinion of the auditor for the HOA. The Directors in their purported 29 June 2021 Rules for the HOA also attempted to make all members of the HOA dues paying non equity members of the Apes Hill Club, a private golf club owned and operated by the Controlling Member, thus providing a perpetual source of revenue to the Apes Hill Club from all owners of lots in the Development.

For your further information, here is a summary provided by counsel for the Claimants of the relief requested by the Claimants against the HOA, the Controlling Member and the Directors:

- (1) a declaration that the present Board of Directors of the HOA is not validly constituted and that any action that it has purported to take since 3 February 2020 is invalid, null and void ab initio;
- (2) a declaration that the HOA Rules that were purportedly made on 29 June 2021 by the Board of Directors of the HOA are invalid, null and void and that the HOA Rules that were made on 24 February 2006 by the then-Board of Directors of the HOA are the existing and applicable rules of the HOA;
- (3) an order compelling the HOA to convene a meeting of its members to regularize its affairs, including for the proper and lawful election of new directors, with adequate notice provided to all members, within sixty (60) days from the date of the Court's order;
- (4) a declaration that the Board of Directors of the HOA has no power to, and it is unlawful for them to purport to, compel present and/or future members of the HOA to become members of the Apes Hill Club, a private golf club owned and operated by the Controlling Member;
- (5) a declaration that the Board of Directors of the HOA has no power to, and it is unlawful for them to purport to, grant exemptions to members of the HOA, including the Controlling Member, from the payment of fees to the HOA that are mandated by the HOA's constating documents;
- (6) a declaration that the Directors have acted in breach of their duties as directors to act honestly and in good faith, with a view to the best interests of the HOA;

(7) an order compelling the HOA to produce an accounting of all income, expenses, assets and liabilities of the HOA from 3 February 2020 until date within sixty (60) days from the date of the Court's order;

(8) an order compelling the HOA to produce its register of members within seven (7) days of the Court's order;

(9) an order restraining the Directors, in their capacities as the directors of the HOA, from taking any further actions or steps that are or may be contrary to the Articles of Incorporation or Bylaws of the HOA or that are otherwise detrimental to the interests of the HOA or its members;

(10) an order compelling the Controlling Member to convey the land comprised in the Development that is known, and referred to in the HOA's constating documents as, the "Common Property", which includes, inter alia, the grounds, roads and carparks in the Development, to the HOA, and

(11) an order directing the HOA and the Directors to comply with, and restraining them from breaching, the HOA's constating documents, particularly its Bylaws and Articles of Incorporation.

Here a summary of the relief requested against the Controlling Member and GWVA:

(1) a declaration that the present Board of Directors of GWVA is not validly constituted and that any action that GWVA has purported to take through its directors since 3 February 2020 is invalid, null and void ab initio;

(2) an order compelling GWVA to convene a meeting of its members to regularize its affairs, including for the proper and lawful election of new directors, with adequate notice provided to all members, within sixty (60) days from the date of the Court's order;

(3) a declaration that any and all steps taken towards the dissolution of GWVA to date are invalid, unlawful and of no effect;

(4) an order compelling GWVA to produce an accounting of all income, expenses, assets and liabilities of GWVA from 3 February 2020 until date within sixty (60) days from the date of the Court's order;

(5) an order compelling GWVA to produce its register of members within seven (7) days of the Court's order;

(6) an order compelling GWVA to produce a full account of all monies paid to it by its members from its incorporation to date;

(7) an order restraining GWVA, through its directors and officers, from taking any further actions or steps that are or may be contrary to its Articles of Incorporation or Bylaws or that are otherwise detrimental to the interests of GWVA or its members; and

(8) an order compelling the Controlling Member to convey the land comprised in the Garden Wall Phase of the Development that is referred to in GWVA's constating documents as the Common Property to GWVA.

In relation to the HOA specifically, the relief sought dissolves the current Board and requires the establishment of a valid Board to ensure compliance with the Bylaws. The relief sought also

protects members' rights, ensures fair fee structures without unauthorized exemptions, and increases financial and operational transparency. In relation to the Directors specifically, the relief sought holds them accountable for misconduct and prevents further misconduct or breaches of the Bylaws or constating documents by them. In relation to the Controlling Member, it ensures compliance with the Bylaws by requiring it to convey the relevant Common Property to the HOA and GWVA. In relation to GWVA , the relief sought dissolves the current Board and requires the establishment of a valid Board to ensure compliance with the Bylaws. The relief sought also protects members' rights, preserves the existence of GWVA and increases financial and operational transparency.

Yours Faithfully,

Paul L. Lamb
President
Apes Hill Benevolent Society, Inc