
RUAN C. MARTINEZ
 Attorney-at-Law
 Bynoe Martinez & Co., Attorneys-at-Law
 Morgan House, Haymans
 St. Peter
 Tel: 626-0111; Fax: 626-0112
 Email: rmartinez@bynoemartinez.com



CIV0284/2023

CLAIM No.

IN THE SUPREME COURT OF BARBADOS

HIGH COURT OF JUSTICE

IN THE MATTER OF Apes Hill Club
Homeowners Association Inc.

AND IN THE MATTER OF Section 228 of the
Companies Act, Chapter 308 of the Laws
of Barbados

BETWEEN

**LAMBCHOP PROPERTIES, LLC
 RMJE PROPERTIES, LLC
 CHARLES WILLIAM PATTISON
 YVONNE LANKRY**

**FIRST CLAIMANT
 SECOND CLAIMANT
 THIRD CLAIMANT
 FOURTH CLAIMANT**

AND

**APES HILL CLUB HOMEOWNERS ASSOCIATION INC.
 CHRISTOPHER ANTHONY AUDAIN
 SUNIL CHATRANI
 RODDY JAMES CARR
 APES HILL (BARBADOS) INC.
 GARDEN WALL VILLA ASSOCIATION INC.**

**FIRST DEFENDANT
 SECOND DEFENDANT
 THIRD DEFENDANT
 FOURTH DEFENDANT
 FIFTH DEFENDANT
 SIXTH DEFENDANT**

AFFIDAVIT OF SUNIL CHATRANI

I, **SUNIL CHATRANI** of 9 Wildey Avenue, Fort George in the parish of Saint Michael this Island **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Third named Defendant herein and I am a Director of the First and the Fifth named Defendants herein. I make this Affidavit on my behalf and I am authorised to make this Affidavit on

behalf of the Fifth named Defendant, Apes Hill (Barbados) Inc.

2. I am enabled to make this Affidavit from matters within my personal knowledge and from examining the documents of the Fifth Defendant of which I am a director. Insofar as the facts and matters deposed to herein are within my knowledge, they are true and correct. Insofar as the facts and matters deposed to in this Affidavit are not within my personal knowledge they are to the best of my knowledge, information and belief having been derived during the course of my duties and from documents and records which I have seen and verily believe to be authentic and from advice received from by Attorney-at-Law.
3. I have read the affidavit of Mr. Paul Lawrence Lamb filed on the 12th day of April, 2023 and served on the 21st day of April, 2023 in support of the Fixed Date Claim Form filed on the 12th day of April, 2023 and served on the 21st day of April, 2023 (the "Affidavit").
4. I have no knowledge of the facts and matters set out in paragraphs 1 and 3 of the Affidavit and as such I cannot admit or deny the allegations contained therein.
5. I admit the matters contained in the following paragraphs of the Affidavit: 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, , 19, 20, 22, 24, 26, 29, 30, 31, 32, 34, 43, 55, 56, 57, 58, 71, 72, 74, 77, 78, 83, 84, 85, 87, 90, 91, 92, 93, 94, 96, 97, 98, 151, 162.
6. I am advised by my Attorney-at-Law and verily believe that the matters contained in the following paragraphs: 23, 38, 39, 44, 46, 48, 60, 70, 73, 79, 81, 86, 99, 103, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 121, 123, 124, 127, 128, 129, 130, 131, 133, 135, 138, 139, 140, 141, 142, 144, 145, 146, 153, 156, 157, 159, 162, 165, 169, 172 and 176 do not constitute evidence on the grounds that some matters therein contained are: (i) matters of law to be determined by a court of competent jurisdiction; (ii) an opinion contrary to Section 64(1) of the Evidence Act, Chapter 121 of the Laws of Barbados; (iii) argument; (iv) conclusions based upon evidence which is disputed; and (v) hearsay contrary to Section 50 and 51 of the Evidence Act, Chapter 121 of the Laws of Barbados and/or the evidence is confusing and/or its prejudicial value outweighs its probative value.
7. In respect of the "*Purchase of the remining Property at the Development by Apes Hill Inc.*" which is referred to at paragraphs 55 to 60 and 99 and 100 of the Affidavit, I am advised by my Attorney-at-Law and verily believe that the Assignment of Developer Rights dated the 3rd day of February, 2020 (the "Assignment") is and was enforceable and effective to assign to the Fifth Defendant all rights of the previous developer in relation to the development in that it was the intention of the parties to the Assignment that it would be so effective and the parties conducted their respective businesses on that basis. I am further advised by my Attorney-at-Law and verily believe that neither the Apes Hill Club Homeowners Association Inc. (the "Association") or any of its members were a party to the

Assignment and as such have no rights or obligations under the Assignment. I have reviewed the Assignment and I have been advised by the parties thereto that they acted pursuant to the Assignment.

- 8 (a). In respect of paragraphs 62 to 82 of the Affidavit which contain allegations that touch and concern the First Defendant and as such are matters raised *inter alios* between the Claimants and the First Defendant, I am aware that a director of the First Defendant has responded to the allegations contained in the aforementioned paragraphs. Notwithstanding the foregoing, I am advised by my Attorneys-at-Law and verily believe that pursuant to Section 12.2 of the Bylaws of the First Defendant that in the event of any vacancy amongst the First Directors (as defined in the Bylaws of the First Defendant) of the First Defendant, such vacancy may be filled by the remaining first directors of the Company. I am further advised by my Attorneys-at-Law and verily believe that pursuant to Section 10 of the Bylaws of the First Defendant that the aforementioned first directors shall continue to act as directors of the First Defendant until they are removed by resolution of the members to be passed at the first meeting of members after the Turnover Date. The Turnover Date is defined in the Bylaws of the First Defendant as the date on which the Developer completes the sale of the last residential lot in the Development and further defined in Section 3.5 of the Rules of the Association dated February 24th, 2006 (the "2006 Rules") as "*the earliest of the following dates: (a) the date that all of the Expansion Association Area has become part of the Association Area and the last Privately Owned Site within the Association Area has been sold and conveyed by Developer to a non-Developer Owner; or (b) the date that Developer has relinquished its rights, whether voluntarily or otherwise, to elect two of the Directors and its right to appoint the Members of the Architectural Review Committee in accordance with Section 10.1 hereof.*" To the extent that the Developer has not yet completed the sale of the last residential lot in the Development then the first directors, as the term is used in the Bylaws of the Association, are entitled to appoint individuals to fill vacancies in the Board of Directors of the Association.
- 8 (b). In respect of paragraph 80 of the Affidavit which states that the Revised Rules (as defined in the Affidavit) goes on to provide that: "...*The directors appointed at incorporation of the Association and any directors subsequently elected by the Developer prior to the Turnover Date shall have a **fiduciary duty solely to the Developer and will act solely on behalf of the Developer***", I am advised by my Attorneys-at Law that the only amendment made to the section previously quoted was the inclusion of the following words: "... *and any directors subsequently elected by the Developer prior to the Turnover Date.*" The inclusion of a requirement for directors to have a fiduciary duty solely to the Developer and will act solely on behalf of the Developer was contained in Section 3.5 of the 2006 Rules as drafted by the legal counsel for the previous developer, Apes Hill Development SRL.

9. In respect of paragraphs 83 to 95 of the Affidavit which concern "*Amendments to mandate membership to Apes Hill Club*", these allegations also touch and concern the First Defendant. I am, however, aware that the Fifth Defendant wrote to all members of the Association on December 9th, 2022 and advised the members of the Association that the membership in the Apes Hill Club was no longer mandatory. I am shown a copy of the letter dated December 9th, 2022 which is attached hereto and marked "SC 1".
10. In respect of the matter contained in paragraphs 104 to 116 of the Affidavit which concern "*The Claimants' Claims against the Association, the Present Board and Apes Hill Inc.*", I am advised and verily believe that the matters are raised *inter alios* the Claimant and the First Defendant.
- 11(a). In respect of the matter contained in paragraph 122 of the Affidavit which concern "*Provisions empowering Apes Hill Inc. to appoint and control the directors of the Association*" I am advised by my Attorneys-at-law and verily believe that the Turnover Date as defined in the Bylaws of the Association has not yet arrived and as such the right to appoint directors to fill vacancies on the Board of the Association can only be exercised by the first directors of the Association and any director appointed by the first directors to fill a vacancy on the Board of Directors of the Association until the Turnover Date.
- 11 (b) Further, I am advised by my Attorneys-at-Law and verily believe that the allegation of the Claimants contained in paragraph 122 that the amendments made to the rules of the Association purported to vest the Fifth Defendant with "*de facto, unlimited and indefinite control over the Association, to the exclusion of all other members by..... (b) relieving the directors of fiduciary duties and obligations owed to the Association (by the Bylaws and the Companies Act) and making them instead answerable to only Apes Hill Inc., by (i) imposing on the directors a fiduciary duty owed to Apes Hill Inc. alone; (ii) providing that the directors are to act solely on behalf of Apes Hill Inc.; and (iii) empowering Apes Hill Inc. to control or impose any restrictions it deems fit on the actions of the directors, be reserving a right for Apes Hill Inc. to require that the directors obtain its permission in writing before taking any actions (including for example, the imposition of fees and dues in respect of the property at the Development owned by Apes Hill Inc.)*" are incorrect. I am advised by my Attorneys-at-Law that the said amendments to the Rules of the Association were already contained in section 3.5 of the 2006 Rules which are included as Exhibit PAL-10 to the Affidavit. Section 3.5 of the 2006 Rules provides that "**The directors appointed at incorporation of the Association shall have a fiduciary duty solely to the Developer and will act solely on behalf of the Developer.....The document by which Developer voluntarily relinquishes its right to appoint directors and its right to appoint the members of the Architectural Review Committee, as described in subsection (b)in the immediately preceding sentence, may allow Developer to reserve the right to require Developer's prior written approval of certain actions by the Board of Directors**

including, by way of illustration but not limitation, the following: (i) any action that increases the Base Assessment only on Developer's property or imposes a Special Assessment only on Developer's property, and (ii) any action that, in Developer's opinion, impairs or restricts Developer's ability to develop and market its property with the Association Area." (emphasis added).

11. In respect of the matters contained in paragraphs 126 to 137 of the Affidavit which concern "*Mandatory membership to Apes Hill Club*", I am advised by my Attorneys-at-Law and verily believe that the requirement for mandatory membership in the Apes Hill Club had been rescinded and the same was communicated to all members of the Association on December 9th, 2022.
12. In respect of the matters contained in paragraphs 138 to 147 of the Affidavit which concern "*Association cannot exempt Apes Hill Inc. from payment of fees*", I am advised by my Attorneys-at-Law that the matters are raised *inter alios* the Claimants and the First Defendant. I am also aware that the First Defendant is indebted to the Fifth Defendant for work undertaken in the Development which is the responsibility of the Association to complete and maintain. I am further advised by my Attorneys-at-Law that pursuant to Section 7.4.2 of the 2006 Rules that prior to the Turnover Date, the Developer may elect to pay the Base Assessments on Privately Owned Sites owned by the Developer or in lieu thereof, not pay such Base Assessments and pay any deficit incurred in operating the Association and the Association properties. There are works which have been undertaken within the Development by the Fifth Defendant that are the financial responsibility of the Association and the Association is unable to fund the cost of the same, the Fifth Defendant has paid the costs of works and continues to fund the costs of such works as the Association is unable to fund the same and would create a deficit in the operation of the Association if the Association was required to.
13. In respect of the matters contained in paragraphs 157 to 162 of the Affidavit which concern "*Association and Directors have failed to keep and disclose adequate corporate records*", I am advised by my Attorneys-at-Law that the matters are raised *inter alios* the Claimants and the First Defendant.
14. In respect of the matters contained in paragraphs 167 to 172 of the Affidavit which concern "*Association and Directors have failed to ensure the conveyance of the common areas to the Association*", Section 4.2 of the Rules of the Association dated February 24th, 2006 provides that "*Developer may hereafter convey certain areas of land to the Association as Common Areas intended for common use by the Owners in the Association Area...*". Further, Section 1.1 of the Bylaws of the Association provides the definition of Common Property to be "*all of the land comprised in the Development (other than the hotel, golf courses, club house and facilities related thereto, the recreational facilities and residential lots shown on the Key Plan) comprising inter alia,*

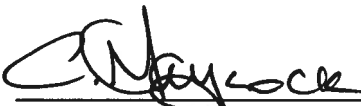
the grounds, road and the car parks which are to be vested in and owned by the Company for the benefit of all owners of Lots the Development". Additionally, Section 24(1) of the Agreements for Sale relied upon by the Claimants specifically provides "Whenever it is, in the opinion of the Vendor, feasible to do so the Vendor shall endeavour to convey to the Garden Wall Association those lands forming part of the common areas, road, gullies, water courses and open spaces (but not including the hotel, golf courses, recreational facilities or club house) comprised in the Parcel or as defined in the Garden Wall Villas Building Association Inc. Rules ("the Parcel B Common Areas") within the development within three months of the date of the completion of the sale of the last residential lot within the Parcel.....The Vendor shall in its sole discretion (subject to relevant planning requirements) alter vary or change any such areas from Common Areas to saleable lots."

SWORN To by the deponent the
said **SUNIL CHATRANI** at
Apes Hill, St. James
on the 27th day of September, 2023

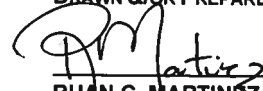
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S. Chetani

Before me:


Christina C.D. Maycock
Attorney-at-Law

DRAWN &/OR PREPARED BY


RUÁN C. MARTÍNEZ
Attorney-at-Law
Bynoe Martínez & Co., Attorneys-at-Law
Morgan House, Haymans
St. Peter
Tel: 626-0111; Fax: 626-0112
Email: rmartinez@bynoemartinez.com



CLAIM No.

CV 0284/2023

IN THE SUPREME COURT OF BARBADOS

HIGH COURT OF JUSTICE

BETWEEN

LAMBCHOP PROPERTIES, LLC
RMJE PROPERTIES, LLC
CHARLES WILLIAM PATTISON
YVONNE LANKRY

FIRST CLAIMANT
SECOND CLAIMANT
THIRD CLAIMANT
FOURTH CLAIMANT

AND

APES HILL CLUB HOMEOWNERS ASSOCIATION INC.
CHRISTOPHER ANTHONY AUDAIN
SUNIL CHATRANI
RODDY JAMES CARR
APES HILL (BARBADOS) INC.
GARDEN WALL VILLA ASSOCIATION INC.

FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT
FOURTH DEFENDANT
FIFTH DEFENDANT
SIXTH DEFENDANT

EXHIBIT SC 1

Attached is a copy of the Exhibit referred to in the Affidavit of Sunil Chatrani dated the 27th day of September, 2023 as "Exhibit SC 1".

Dated the 27th day of September, 2023



Christina C.D. Maycock
Attorney-at-Law

EXHIBIT "SC 1"



9th December 2022

Dear Homeowner,

Further to our correspondence dated 6th September 2021, we have extended the deadline for submission of completed membership applications in the Apes Hill Club (the “Club”), from 1st October 2021 to 23rd December 2022. Additionally, it has been decided that Club membership shall no longer be mandatory. You will now have the opportunity to make your choice on your membership status.

The Club shall include the following facilities:

- an 18-hole championship course;
- a 9-hole par 3 course;
- golf performance centre & practice facilities;
- the Clubhouse;
- racquet sports & tennis centre;
- health & fitness facilities; and
- swimming facilities.

While some of the afore-mentioned facilities are now complete and available for your enjoyment; others are still under construction but shall become available for use throughout the time of your membership. We continue to evolve, delivering new experiences over time, and therefore the list of Club facilities is not exhaustive and may be enhanced and/or amended from time to time. Your



enjoyment of the Club is of great value to us, and we strive to provide you with ample accessibility to our amenities. Therefore, with our Vertical Family Membership Program and the high number of membership applications received from homeowners, we foresee the need to determine a maximum limit for Club memberships. This should ensure adequate access for members to the Club's facilities.

As you are aware, the initiation fee for the Club is US\$125,000.00 (VAT inclusive) with an annual membership fee of US\$20,000.00 (VAT inclusive). Persons who apply for Club membership, with lot ownership represented by conveyance documentation recorded at the Barbados Land Registry prior to 1st July 2021, shall have the initiation fee waived and the said lot shall be indefinitely entitled to Club membership. In the same circumstance, persons who decide not to apply for Club membership, shall have no access to the above-mentioned facilities and their lot shall no longer be entitled to Club membership, currently or in the future.

On the other hand, persons who purchased lots subsequent to 1st July 2021 and apply for Club membership, must pay the initiation fee and those lots shall also indefinitely be entitled to Club membership. In the event that such a person does not wish to apply for membership in the Club, their lot shall not be entitled to Club membership going forward and there shall be no current or future access to the previously mentioned facilities.



Based on the above, we offer you the opportunity to select your preference and notify us of your decision by 23rd December 2022, by way of email correspondence to membership@apeshill.com. Kindly note that persons who have previously applied for membership, need not apply again in this instance.

We look forward to hearing from you.

Yours Sincerely,


Sunil Chatrani

BARBADOS

CLAIM No. 0284 of 2023

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT - CIVIL DIVISION

BETWEEN

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AFFIDAVIT

**BYNOE MARTINEZ & Co.
ATTORNEYS-AT-LAW**
