



Neutral Citation Number: [2026] CIGC (Civ) 26

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. G55 OF 2026

**IN THE MATTER OF SECTION 23 OF THE STRATA TITLES REGISTRATION ACT (2013 REVISION)
AND IN THE MATTER OF STRATA PLAN NO. 608 ("COUNTRY SIDE ESTATES")**

IN OPEN COURT

BEFORE: The Chief Justice, the Hon Justice Margaret Ramsay-Hale

Appearances: Mr Brett Basdeo and Mr David Lee of Walkers (Cayman) LLP

Heard: 12 May 2026

Draft Judgment

Circulated: 13 August 2026

Judgment Delivered: 14 August 2026

Strata titles – phased developments – future development strata lots – standing – proprietor – whether future development strata lots capable of having proprietors notwithstanding absence of separate registers – executors of estate of original proprietor entitled to apply under s.23(4) – destruction – meaning of "building" – whether buildings shown on strata lot development plan capable of being deemed destroyed under s.23(2)(b) – whether just and equitable to deem future development buildings destroyed where development abandoned

JUDGMENT

Introduction

1. By Petition dated 9 March 2026, the Petitioners, Mrs Susan Van Dijk, Mr Ronald Bruce Handford and Mrs Mary McArthur (the "Petitioners"), in their capacity as executors of the Estate of James Bruce Handford (the "Estate"), seek declarations pursuant to section 23(2)(b) of the Strata Titles Registration Act (2013 Revision) (the "Act") that Blocks A, D, G and H shown on Strata Plan No. 608 (the "Strata Plan") be deemed destroyed. They also seek consequential orders under section 23(3) adjusting their interests in the future development strata lots associated with those Blocks. In particular, they seek the transfer or vesting in the Estate of

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the portion of the common property corresponding to the unit entitlements assigned to those lots, not exceeding 53.9% of the common property.

2. The application arises in an unusual factual and statutory setting. The first phase of the development contemplated by the Strata Plan was completed many years ago, but the second phase, comprising Blocks A, D, G and H, was never constructed and, on the evidence before the Court, will not now proceed. Substantial undeveloped land therefore remains incorporated within the Strata Plan as part of an abandoned future phase.

The Factual Background

3. The evidence supporting the Petition is set out in the affidavit of Ms Susan Van Dijk sworn on 30 April 2026. She explains that the late Mr James Handford was the registered proprietor of a parcel of land known as Block 28 C 531 on which he intended to construct a residential development. He caused Strata Plan No. 608, known as Country Side Estates, to be registered in connection with a proposed residential development comprising eight residential buildings to be constructed in two phases. He successfully completed Phase 1 which comprised Blocks B, C, E and F on the strata plan and the associated strata lots were sold to third parties
4. Phase 2 was intended to comprise Blocks A, D, G and H. Although these buildings were identified in the proposed strata development plan and allocated unit entitlements, Phase 2 was never built. The Estate has no intention of completing Phase 2 which remained registered in Mr Handford's name at the date of his death. The Petitioners consequently seek to remove the undeveloped parcel from the strata development.
6. The Petitioners have explored the possibility of removing the strata lots from the strata lot development plan by registering an amended strata lot development plan which does not include the Phase 2 buildings. This approach, however, required the them to obtain the unanimous consent of the existing proprietors of every strata lot within the phase strata plan and every person with a registered interest in any such lot. made a concerted effort to engage with the proprietors of the completed strata lots to achieve a consensual resolution, but those efforts proved unsuccessful.
7. The Registrar of Lands has confirmed there is no administrative mechanism available to the Petitioners under the Act to achieve the removal of the undeveloped Phase 2 buildings from the strata development. They now petition the Court for declarations pursuant to section 23(2)(b) of the Act that Blocks A, D, G and H be deemed destroyed and thus removed from the strata plan, together with such consequential directions under section 23(3) to remove the remainder of the undeveloped parcel from the strata development plan.

The Statutory Scheme

8. The Act permits land to be divided into individually owned strata lots and common property. Upon registration of a strata plan, separate registers are opened for the strata lots, while the balance of the parcel constitutes the common property of the strata scheme. The proprietor of the original parcel is recorded as the first proprietor of each strata lot.

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9. Part V adapts that system for a development intended to be completed in stages. It contemplates three types of registered plan. First, a proposed strata lot development plan describes the development as it is intended to exist when completed. Secondly, successive phase strata plans record the buildings, strata lots and common property completed at each stage and identify the undeveloped balance as one or more future development strata lots. Finally, upon completion of the development, a complete strata plan records all the strata lots and common property comprising the finished scheme.
10. A future development strata lot therefore represents the area reserved for development and subdivision at a later phase. It is recognised as a strata lot under Part V although the individual apartments intended to be constructed within it may not yet be capable of being separately defined and registered. As each phase is completed, the relevant phase strata plan replaces the preceding plan until the complete strata plan is registered.
11. That statutory structure explains the present difficulty. Phase 1 of Strata Plan No. 608 was completed and its apartments were separately registered. Phase 2 was not completed. The areas intended for Blocks A, D, G and H remain within the registered scheme as future development strata lots, but the proposed units within those Blocks were never constructed or separately registered.
12. Against that background, I set out the provisions which bear upon the application.
13. Section 10 provides for the opening of a register for each strata lot shown on the plan upon registration of a strata plan.

Registration of strata plans

10. *If the Registrar is satisfied that an application for registration of a strata plan is in order he shall —*
 - (a) file the strata plan;*
 - (b) open a new register in respect of each strata lot shown on the strata plan in accordance with section 11; and*
 - (c) in respect of the register relating to the parcel —*
 - (i) record in the property section that the land comprised consists only of the common property;*
 - (ii) in the proprietorship section delete the name of the proprietor, substitute the name of the strata lot corporation established under section 5 (and enter a restriction prohibiting any dealings with the land otherwise than by order of the court or of the Registrar); and*
 - (iii) note in the incumbrance section that registers in respect of the strata lots have been opened.*
14. Section 11 provides, *inter alia*, for the proprietor of the parcel to be recorded as the first proprietor of each strata lot:

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Strata lot registers

1(1) *The registers opened by the Registrar in accordance with section 10 in respect of each strata lot in a parcel shall record —*

- (a) all the particulars recorded in the property section of the register relating to the parcel in question and including the unit entitlement of the strata lot in question;*
- (b) the proprietor of the parcel as the first proprietor of the strata lot; and*
- (c) the incumbrances noted in the incumbrances section of the register relating to the parcel;*

Provided that if the Registrar is satisfied that any of such particulars or incumbrances do not apply to the strata lot he shall omit them from the register relating to the strata lot and record the reason for his decision.

15. Part V of the Act contains a separate regime governing phased developments. Section 15 contains the following definitions:

15. *In this Part —*

“complete strata plan”, in relation to a subdivision of land into strata lots in phases, means a strata plan specifying all the strata lots (and the whole of the common property) of a proposed development in relation to a building or buildings;

“future development strata lot”, in relation to a subdivision of land into strata lots in phases, means a strata lot that is proposed to be developed at a later phase of the development, and that is shown on a phase strata plan as a future development strata lot;

“phase strata plan”, in relation to a subdivision of land into strata lots in phases, means a strata plan specifying each strata lot and each part of the common property that has so far been completed showing that every building shown on the plan has been erected, and all other development work has been carried out, to the extent necessary to enable all the boundaries of every strata lot and the common property shown on the plan to be physically measured at the date of the lodgement of the plan, the balance being specified as one or more future development strata lots;

16. Section 17 requires a phase strata plan to specify all strata lots and common property proposed to be included in the completed development, including any area designated as a future development strata lot:

Procedure for subdivision in phases

17. *The subdivision of land so as to provide for strata lots in two or more phases shall be effected by the successive registration of —*

- (a) a proposed strata lot development plan, which shall specify all the strata lots, and the whole of the common property, proposed to be included in the development when it is completed;*
- (b) one or more phase strata plans each of which shall, in addition to satisfying the requirements of section 4, specify —*
 - (i) each part of any common property that has been completed, in relation to any building forming part of the development which has also been completed; and*

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- (ii) *any area (designated on the plan as a future development strata lot) in which further development subdivision and other operations are required to complete the development; and*
- (c) *a complete strata plan.*

17. The Proposed Strata Lot Development Plan exhibited to Ms Van Dijk's affidavit depicts Blocks A, D, G and H which were the proposed Phase 2 buildings. It identifies the future development strata lots and assigns unit entitlements to them, although the buildings were never constructed.
18. Section 18 governs alterations to phased developments:

Proposed strata lot development plans

18. (1) *A proposed strata lot development plan shall not be registered unless it is accompanied by a phase strata plan in respect of the same development.*
- (2) *When a proposed strata lot development plan has been registered, the proposed strata development shall not be further altered in any way, unless a further proposed strata lot development plan has been registered, incorporating the proposed changes, in accordance with subsections (3) and (4).*
- (3) *The applicant for registration of a further proposed strata lot development plan **must have obtained the unanimous consent** —*
 - (a) ***of every proprietor of a strata lot (including a future development strata lot) shown on the latest phase strata plan registered in respect of the development;***
 - (b) *of every other person who has a registered interest in any such strata lot; [emphasis mine]*
19. The relevant parts of section 23 under which this application is made are set out below:

Destruction of a building

23 (1) Where a building is destroyed -

- (a) *the corporation shall forthwith lodge with the Registrar, in such form as may be prescribed, a notification of such destruction; and*
- (b) *the Registrar shall, upon receipt of such notification, make, in such form as may be prescribed, an entry thereof on the registered strata plan, and thereafter the proprietors of all the strata lots contained in such strata plan shall be entitled to the parcel as proprietors in common in shares proportionate to the unit entitlement of their respective strata lots and sections 14 and 22 shall apply in relation to the transfer or lease of the parcel and to the creation of any easement or restrictive agreement burdening or benefiting it.*
- (2) *For the purposes of this Law, **a building referred to in subsection (1) is destroyed -***
 - (a) *when the proprietors by super-majority resolution so resolve; or*

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(b) when the court is satisfied that, having regard to the rights and interests of the proprietors as a whole, it is just and equitable that such building shall be deemed to have been destroyed and makes a declaration to that effect.

...

- (4) *An application for a declaration under paragraph (b) of subsection (2) may be made to the court by the corporation, by a proprietor or by a registered chargee of a strata lot...*

20. The intended practical effect of the declaration sought, together with any necessary consequential directions under section 23(3), is to separate the undeveloped Phase 2 land from the completed Phase 1 strata development.

The Issues

21. The application raises the following questions for resolution:
- (1) Whether Mr Handford was a proprietor of the Phase 2 future development strata lots for the purposes of section 23(4), such that the Petitioners, as executors of his Estate, have standing to bring the application;
 - (2) Whether Blocks A, D, G and H, being buildings shown on the registered Phase Strata Plan but never physically constructed, are capable of being deemed destroyed under section 23(2)(b);
 - (3) Whether, having regard to the rights and interests of the proprietors as a whole, it is just and equitable to make the declarations sought; and
 - (4) If so, what consequential orders should be made under section 23(3) to adjust the interests of the Estate, the Corporation and the Phase 1 proprietors.

Standing

22. As noted above, Mr Handford remained registered as proprietor of the parcel on which Phase 2 was to be developed until his death. The Petitioners are now registered as proprietors of the parcel. This does not give them standing to make this application as section 23(4) provides that the application may be made by the Strata Corporation, a proprietor or a registered chargee of a strata lot.
23. Section 2 defines “*proprietor*” as “*the proprietor for the time being of a strata lot*”. The first issue for resolution then is whether Mr Handford was the proprietor of the Phase 2 future development strata lots.
24. In his submissions, Mr Basdeo noted that separate registers had not been opened pursuant to section 10 for the future development strata lots in Phase 2 and no proprietor of those lots had been recorded pursuant to section 11. He submitted, however, that the absence of separate registers did not mean that the future development strata lots had no proprietor. Part V expressly recognises future development strata lots notwithstanding that the contemplated later development has not been completed. Section 18(3)(a), by requiring the consent of the

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proprietor of such a lot before the proposed development may be altered, necessarily recognises both that the lot has a proprietor and that the proprietor's interest is real and consequential, despite the absence of an issued register. He argued that confining "proprietor" to the person named on a separate lot register would be inconsistent with section 18(3)(a), which expressly contemplates that a future development strata lot has a proprietor.

25. Mr Basdeo submitted that Mr Handford, as the original proprietor of the parcel, retained the entire beneficial and residual interest in the Phase 2 future development strata lots. No other person acquired or asserted any proprietary interest in it. A construction which left the future development strata lot without a proprietor would leave the proprietor of the parcel without a remedy and sterilize the land indefinitely.
26. He argued that Mr Handford should therefore be treated as their proprietor for the purposes of section 23(4). Upon his death, that interest devolved to his Estate which had standing to bring this application.
27. Alternatively, Mr Basdeo submitted that the Petitioners' interest was *bona fide* and that they would otherwise be without an effective remedy. Relying upon *Deloitte & Touche AG v Johnson* and the decisions in *Re GFN Corporation Ltd*, he submitted that they had a sufficient interest to invoke the Court's jurisdiction notwithstanding the absence of separate register entries.
28. I reject that proposition. Those authorities concern the standing of an alleged creditor to present a winding-up petition where the debt upon which that standing depended was disputed. They are not authority for the proposition that a person who does not fall within a class prescribed by statute may nevertheless invoke the statutory jurisdiction because that person acts *bona fide* or would otherwise be without a remedy. Indeed, *Deloitte & Touche AG v Johnson* establishes the contrary: where a statute identifies the category of person who may apply, qualification as a member of that category goes to the Court's jurisdiction. Section 23(4) identifies the persons who may seek a declaration under section 23(2)(b). The Petitioners must therefore establish that they fall within one of those categories. Their "*beneficial or residual interest*" in the parcel and the absence of another remedy cannot, without more, confer standing.
29. I accept Mr Basdeo's principal submission. Part V expressly recognises both a future development strata lot and its proprietor during the period between registration of the phase strata plan and completion of the intended later development. The absence of separately registrable units is an inherent feature of a phased development, not a reason for concluding that the proprietary interest in the undeveloped phase is ownerless.
30. I, therefore, find that Mr Handford was the proprietor of the Phase 2 future development strata lot or lots for the purposes of Part V and section 23(4). That interest devolved to his Estate, and the Petitioners accordingly have standing to bring this application.

The Destruction of Blocks A, D, G and H

31. Section 23 provides that a building may be deemed destroyed either by a super-majority resolution of the proprietors or by a declaration of the Court. The Court may make such a declaration when, having regard to the rights and interests of the proprietors as a whole, it is satisfied that it is just and equitable to do so.
32. The question is whether that jurisdiction extends to Blocks A, D, G and H, which are shown on the registered Strata Plan but were never physically constructed.
33. Mr Basdeo submitted that “destruction” has a special statutory meaning which is not confined to physical destruction. He relied upon the language of section 23(2) under which a building is destroyed for the purposes of the Act when the proprietors so resolve or the Court declares that it is to be deemed destroyed. Neither event depends upon physical demolition or damage.
34. Counsel also relied upon Australian commentary on the materially similar provisions of the New South Wales legislation from which section 23 was derived. In *Strata Titles* (1978), Moses and Tzannes observed:

“Under the 1961 Act, the destruction of the building had a special statutory meaning, not directly related to the physical fortunes of the building at all. Thus a building was destroyed under s.19(1)(a) of the 1961 Act when the proprietors by unanimous resolution so resolved.”

35. Rath, Grimes and Moore similarly observed in *Strata Titles: A Handbook comprising Annotations and Practice Notes on the Conveyancing (Strata Titles) Act, 1961 with Regulations and Forms* (1966):

“The destruction contemplated by this section need not be physical. A building is destroyed if the proprietors ‘by unanimous resolution so resolve’ or the Court declares ‘that the building shall be deemed to have been destroyed’. Such a resolution or declaration might be made though the building is not even damaged. Thus the destruction might be purely notional, and in effect provides a method for terminating the strata titles in relation to a parcel.”

36. Mr Basdeo further submitted that the Phase 2 Blocks are “buildings” for the purposes of section 23. Section 2 defines “building” as “the building or buildings shown in a strata plan”. The definition, therefore, turns upon what is shown on the plan, rather than upon whether the building has been constructed. Counsel also relied upon section 3(1), which expressly contemplates registration in relation to land upon which a building “is or is to be constructed”.
37. I accept those submissions. Section 23 gives “destruction” a statutory meaning which is not confined to physical destruction. A building may be deemed destroyed although it remains standing and undamaged. The fact that Blocks A, D, G and H were never constructed therefore does not, of itself, place them outside section 23.

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38. The remaining question - whether an unconstructed Block is nevertheless a “building” - is answered by section 2. The registered proposed strata lot development plan is a plan of the location of buildings and identifies Blocks A, D, G and H by name at their proposed locations. They are therefore buildings shown in a strata plan and fall within the express statutory definition. Section 3(1) confirms that physical construction is not a prerequisite to recognition as a building under the Act.
39. I am therefore satisfied and find that Blocks A, D, G and H are buildings for the purposes of the Act and are capable of being deemed destroyed under section 23(2)(b).

Whether It Is Just And Equitable To Grant The Declarations Sought

40. The remaining question then is whether, having regard to the rights and interests of the proprietors as a whole, it is just and equitable that the Phase 2 buildings be deemed destroyed.
41. The evidence is that the development contemplated by the Strata Plan was intended to proceed in two phases. Phase 1 was completed. Phase 2 was not and never will be.
42. Blocks A, D, G and H therefore remain shown on the Strata Plan and continue to attract their assigned unit entitlements, although the contemplated buildings will never be constructed. The Estate’s interests in the corresponding future development strata lots remain tied to an incomplete scheme which will never be completed.
43. All the existing Phase 1 proprietors were served with the Petition, and the Petition was advertised in accordance with the Grand Court Rules. The registered chargees and cautioners were also served. Before the Petition was presented, the Petitioners circulated a Frequently Asked Questions document which explained that the land proposed to be removed represented a practical approximation of the Estate’s share in the strata, but expressly informed each Phase 1 proprietor that *“you do have an interest in the land to be removed as a result of being one of the proprietors in the strata.”* The proprietors were therefore made aware that the proposal would affect their existing interests in the common property. No proprietor appeared to oppose the application, filed evidence alleging prejudice or advanced a claim for compensation.
44. The absence of opposition is relevant, particularly because the proprietary effect of the proposal was expressly disclosed, but it is not sufficient to establish that the relief is just and equitable. The Court must consider whether the declarations and consequential orders sought by the Petitioners fairly adjust the rights and interests of the proprietors as a whole.
45. The evidence of Ms Van Dijk, sworn in support of the Petition, addresses that issue directly. She explains that only the undeveloped Phase 2 land will be separated from the Strata Plan. The existing proprietors’ occupation and enjoyment of their homes, their access to Larva Drive and their utility services will not be affected. Where necessary, easements will be granted in

favour of the Strata Corporation and the proprietors to preserve access and services, and the Estate will bear the costs associated with implementing the proposed separation.

46. The Petitioners also obtained a valuation from DDL Studio to address the possibility that the separation might diminish the value of the completed development or the individual strata lots. The valuers' opinion was that removal of the land corresponding to Phase 2 would have a negligible effect on those values. That evidence is not challenged, and no Phase 1 proprietor has advanced a claim for compensation or identified any other financial prejudice.
47. I am therefore satisfied that the proposed separation will not cause material prejudice to the Phase 1 proprietors. Their existing occupation, access and services will be preserved, the costs of implementation will not fall upon them, and the valuation evidence does not indicate any material diminution in value.
48. Clause 36 of the bye-laws on which Ms Van Dijk relies is also relevant to the assessment of the proprietors' interests. The bye-laws were adopted in September 2018 and clause 36 was expressed to subsist for seven years. During that period, the proprietors covenanted not to object to alterations or modifications involving strata lots no longer intended as a future phase of the development, provided that the maximum permitted number of strata lots was not exceeded.
49. The Petitioners' efforts to achieve a consensual resolution began before that period expired but it had expired by the time the Petition was presented. I do not treat clause 36 as presently binding or as a substitute for the consent required by section 18 but I consider that it nevertheless provides relevant evidence of the basis upon which the strata scheme was constituted and of the proprietors' original expectations, including the possibility that an intended future phase might not proceed or that the plan might consequently be altered.
50. Having regard to those matters as a whole, I am satisfied that it is just and equitable that Blocks A, D, G and H be deemed destroyed. Their continued inclusion serves no useful purpose and perpetuates an incomplete scheme which will never be completed. Although the proposed consequential adjustment will affect the Phase 1 proprietors' interests in the common property, the unchallenged evidence establishes that their occupation, access and services will be preserved, that the costs of implementation will not fall upon them and that there will be no material diminution in the value of their strata lots. No compensation has been sought by any Phase 1 proprietor, and the evidence does not establish any compensable financial prejudice.

CONSEQUENTIAL RELIEF

51. The declarations do not, without more, achieve the separation sought by the Petitioners. Section 23(1)(b) provides that, following destruction, the proprietors of all the strata lots contained in the Strata Plan become entitled to the parcel as proprietors in common in shares proportionate to the unit entitlements of their respective strata lots.

52. Mr Basdeo submits that, immediately before destruction, the Phase 2 future development strata lots carry 2,500 of the aggregate 4,640 unit entitlements, representing approximately 53.9%. The completed Phase 1 strata lots carry the remaining 2,140 unit entitlements, representing approximately 46.1%. Upon the declarations taking effect, the Estate will cease to hold the Phase 2 interests as strata lots, but their former unit entitlements will determine its substitute interest in the parcel as proprietor in common. The Phase 1 proprietors will collectively become entitled to the remaining 46.1%.
53. Section 23(3) empowers the Court to adjust that statutory consequence. It may impose conditions and give directions, including directions for the payment of money, for the purpose of adjusting the effect of the declarations as between the Corporation and the proprietors and amongst the proprietors themselves.
54. Mr Basdeo described the relief sought as a “tailored unwind” of the abandoned phase which would preserve the Phase 1 proprietors’ rights and protect the interests of chargees. The Petitioners propose that the land marked A1 and A2 on the draft Further Proposed Strata Lot Development Plan (the “Proposed Plan”) exhibited to Ms Van Dijk’s affidavit be allocated to the Estate, and that the balance of the parcel, comprising the completed Phase 1 development and the land required for its operation, remain subject to the Phase 1 strata scheme.
55. Ms Van Dijk’s evidence was that the Phase 1 proprietors’ occupation and enjoyment of their homes would not be affected, that any easements required to preserve access and services would be granted and that the Estate would bear all costs associated with the proposal, including the costs of any planning applications.
56. The Proposed Plan identifying A1 and A2 formed part of the proposal circulated to the Phase 1 proprietors when the Petitioners sought a section 18 resolution to the issue before the Court. No-one objected to the Proposed Plan and no-one appeared to oppose the Petition. The chargees who were served consented to the proposal.
57. I will therefore make consequential directions under section 23(3).

CONCLUSION

58. I grant the Petitioners’ application for a declaration that Blocks A, D, G and H identified on the Proposed Plan shall be deemed to have been destroyed for the purposes of section 23(2)(b) of the **Strata Titles Registration Act** (2013 Revision).
59. I order that lots A1 and A2 as identified on the Proposed Plan annexed to the Judgment are allocated to the Estate and that the remainder of the parcel remains constituted as the completed Phase 1 strata scheme. The Estate is to procure all planning, survey and registration approvals necessary to give effect to this Order and the Proposed Plan.
60. The Petitioners shall, at the Estate’s expense, grant or procure the registration of all easements necessary to preserve the Phase 1 proprietors’ access to Larva Drive and their existing utilities,
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drainage and telecommunications and take all further steps reasonably required by the Registrar to give effect to the Order of the Court.

61. Draft Order to be submitted for the Court's consideration.

DATED this 14 August 2026

A handwritten signature in blue ink, appearing to read 'M. Ramsay-Hale'.

THE HON. JUSTICE MARGARET RAMSAY-HALE
CHIEF JUSTICE OF THE GRAND COURT

ANNEXURE

