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Judgment of March 16, 2011
Belonging to A.R. No. 3322 of 2009

COURT OF FIRST INSTANCE OF ARUBA
JUDGMENT in the case of:

Allan COHEN, living in Aruba,
PLAINTIFF, also to be referred to as Cohen hereinafter,
attorney: the lawyer *mr.* Chris Lejuez

versus:

the cooperative association
MARRIOTT VACATION CLUB INTERNATIONAL OF ARUBA in Aruba,
doing business as Aruba Ocean Club,
DEFENDANT, also to be referred to as AOC hereinafter,
attorneys: the lawyers *mr.* M.G.M. Schwengle and *mr.* A.A.D.A. Carlo.

1. THE PROCEEDINGS

The course of the proceedings appears from:

- the petition;
- the docket decision of November 25, 2009;
- the Answer;
- the statement of AOC of February 3, 2010;
- the record of the session of April 23, 2010, in which parties had their respective positions argued and responded to each other's pleadings, and in which parties were given the opportunity to attempt to amicably resolve the dispute;
- the petition of Cohen of June 16, 2010 to give a judgment.

2. THE ESTABLISHED FACTS

AOC operates a timeshare resort. The owners of this resort have certain rights under their AOC membership. Cohen is an owner and member of AOC. Article 27 of the AOC Articles of Association – Exhibit 1 of the Answer is a translation hereof in English – implies, as appears from this translation, that an authenticated register is kept at the AOC offices with an adequate indication of the names of the members and, in as far as the members live “elsewhere”, stating an elected domicile in Aruba. Everyone can inspect the register and everyone can receive copies hereof against payment, according to Article 27, paragraph 2, of the Articles of Association.

3. PARTIES' POSITIONS

3.1 Cohen claimed that the Court, by judgment to be declared enforceable by anticipation, order AOC, while ordering AOC to pay the costs of the proceedings, to give Cohen a list of the

AOC members with their addresses and e-mail addresses subject to a penalty. Cohen brings forward that he has to dispose of the information to be able to effectively use his powers as an owner and member of AOC (notably to seek support for proposals to the general meeting of members). According to Cohen, the AOC board thwarted his attempts to contact other owners/members.

3.2 AOC put up a defense serving to declare that Cohen has no cause of action, or to deny his claims, while ordering him to pay the costs of the proceedings.

4. THE EVALUATION

4.1 AOC did not contradict in its Answer that Cohen is entitled to the copies of the members' data in the register, but brought forward that Cohen already disposes of same. It explicitly clarified this with Exhibit 6 of that Answer, a copy of a receipt of 07/09/09. As Cohen did not address this defense, it has appeared that he already disposed of the data in the register at any rate less than three months before filing the initiatory petition.¹ Cohen did not explain that AOC afterwards refused to have new copies made and also did not allege what interest he has in receiving them again. The Court therefore declares Cohen's claims inadmissible for lack of interest, in as far as these claims relate to surrender of the members' data contained in the register.

4.2 Cohen alleged and AOC disputed that AOC was also obligated to give Cohen the e-mail addresses of the members. The Articles of Association of AOC do not give Cohen the right to surrender of these e-mail addresses, as e-mail addresses are not included in the register. However, this does not alter the fact that AOC, according to standards of reasonableness and fairness, – within the association these standards apply – has the best efforts obligation to give Cohen the opportunity as much as possible to use his democratic rights as an owner and member of the association. The claim has to be evaluated against this background in as far as it concerns surrender of e-mail addresses.

4.3 AOC denied that it has the e-mail addresses and explained that only “the Manager” has e-mail addresses of members. The project developer gave the manager these addresses on the condition that they would solely be used for certain specifically described objects, according to AOC, which was not contradicted by Cohen to this extent.

4.4 It is not clear what position the manager that AOC means has. If the manager is not a member of the AOC board, the claim for surrender of the addresses cannot be granted, because AOC is not able to do so. If this manager is a member of the board and AOC actually should be deemed able to provide these addresses, the claim can only be granted if it appears after balancing the interests reciprocally involved in it that AOC cannot reasonably refuse to give Cohen the e-mail addresses. Aforementioned best efforts obligations of AOC with regard to Cohen's rights in his capacity of an AOC member count in favor of surrender, but on the other hand are the interests of AOC. If the manager is a member of its board, AOC is bound by the obligations entered into by him towards the project developer. This means that AOC can only make limited use of the addresses. Apparently, the surrender of these addresses to Cohen does not fall under the permitted use. AOC would therefore commit default and/or unlawful act towards the project developer. In that case it makes no difference whether third parties can call the project developer to account pursuant to the Gramm-Leach-Bliley Act or

¹ Even less time ago, if 07/09/09 does not mean July 9, 2009 but September 7, 2009

on other grounds: AOC always has an interest in not violating the arrangements with the project developer.

- 4.5 In addition, a special meeting of members of AOC expressed itself in January 2010 against including e-mail addresses in the membership register. In this connection, Cohen brought forward, it is true, that this is a result of the AOC board influencing the members' opinion, but if unlawful influence was exerted to begin with – AOC denies it -, this does not alter the fact that there is no resolution of the meeting of members to make e-mail addresses of members available to other members, and that it also is not clear what resolution would have followed if the alleged influence had not been exerted.
- 4.6 Finally, AOC pointed out that Cohen has other opportunities to interest other people in his ideas. Cohen did raise that he is hindered in doing so by AOC, but if it would appear that this hindrance has exceeded what is permissible, this single fact has too little importance to obligate AOC to surrender the e-mail addresses.
- 4.7 Given the above, AOC does not act unreasonably towards Cohen, in the Court's opinion, by refusing to surrender the addresses to him, if AOC has these addresses in the first place. The conclusion is therefore that Cohen's claims are inadmissible in as far as they serve to order AOC to provide Cohen with information from the membership register and that the other claims, notably regarding the e-mail addresses, are unfounded. As the unsuccessful party, Cohen is ordered to pay the costs of the proceedings.

5. THE DECISION

The Judge in this Court, adjudicating:

declares Cohen to have no cause of action, in as far as the claims serve to order AOC to give Cohen data from the register;

dismisses Cohen's other claims;

orders Cohen to pay the costs of the proceedings, until this day estimated at Afl. 3,150.- in respect of the attorney's fee.

This judgment was given by *mr.* H.E. de Boer, Judge, and was pronounced in the public session of Wednesday, March 16, 2011 in the presence of the Clerk of the Court.

[was signed]