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The South Ocean Golf & Beach Resort has been embroiled in fresh legal action, with the owner of the hotel's golf course filing a Supreme Court summons for a hearing to repossess the property on the grounds that the resort has allegedly failed to upgrade it in accordance with an earlier agreement.

The summons, which was filed on December 5 by New Providence Development Company, is seeking a Supreme Court hearing on its application to repossess the golf course. It is also seeking damages from the South Ocean Development Company, the immediate holding company for the resort.

However, The Tribune understands that South Ocean and its ultimate financial backer, the Canadian Commercial Workers Industry Pension Plan (CCWIPP), are "vigorously denying" New Providence Development Company's allegations.

It is understood that South Ocean Development Company will oppose and defend the summons and any resulting action brought against it by New Providence Development Company. The two sides are currently corresponding over the situation.

Any repossession of the golf course, which is regarded as the South Ocean resort's main asset, could cause immense problems for the hotel property and CCWIPP.

Should New Providence Development Company be successful in obtaining a court judgement for "vacant possession" of the golf course, which its summons seeks to achieve, South Ocean's bankers, Scotiabank, would have demanded full payment of the \$14 million mortgage taken out on the property.

Such a development could also prove fatal to attempts by CCWIPP and its brokers, Florida real estate company, Allen & Co, to sell South Ocean. The pair have been attempting to find a buyer for the resort for some time now, and despite several expressions of interest there have been no takers.

The Tribune understands that a major factor has been the sales price CCWIPP is seeking, with some sources saying it has been pegged around \$60 million. South Ocean has been a poor financial performer historically, and informed observers believe its true value is currently closer to \$10 million.

Through its Propco 39 and PRK Holdings subsidiaries, CCWIPP subsidised \$5 million of South Ocean's \$7 million loss for 2003. A report sent to the Government revealed that through its Propco subsidiary, it has also had to assume responsibility for the \$14 million mortgage on the property and a \$1 million operating loan.

The initial dispute with New Providence Development Company came after the resort filed a Supreme Court action seeking interlocutory relief and "relief from forfeiture" in 2003, as the 223-room South Ocean resort had been "mortgaged to the Bank of Nova Scotia, now Scotiabank Bahamas Ltd, and if the [golf course] lease is forfeited it would be an act of default, which would cause the bank to demand full payment."

New Providence Development Company counter-alleged that South Ocean had violated the terms of the golf course lease, having failed "to operate and maintain the golf course and club house in a first class condition", as per its obligations.

However, all proceedings were stayed by a Consent Order agreed before Justice John Lyons in Chambers on April 5, 2005.

Under the terms of the Order, South Ocean and its backers agreed to spend \$5 million on upgrading its golf course into one designed by world-famous professional Greg Norman.

The resort aimed to complete the golf course upgrade in 15 months, in time for a re-opening that was tentatively pencilled in for June 1, 2006. It was also proposing to spend a further \$500,000 on enhancing the golf course's clubhouse, a move that would take its total investment to \$5.5 million.

South Ocean Development Company said then it "has already invested in excess of \$1 million into the research and renovation of the golf course and supporting buildings".

As part of the resolution to the legal dispute over the golf course lease, South Ocean deposited \$4.5 million into a Nassau commercial bank selected by both it and New Providence Development Company. That covered the projected costs of the golf course upgrade.

But if the South Ocean resort failed to perform the golf course and clubhouse works in accordance with the Consent Order filed with the Supreme Court, "other than for reasons beyond its control", and failed to remedy breaches within 30 days of being notified, New Providence Development Company will immediately gain an Order for vacant possession.

This is what the New Providence Development Company summons is seeking damages on. In the event of a dispute over whether the Consent Order has been breached, both parties can apply to a judge for court directions.