

Club Los Claveles Financial Report to the 2019 AGM

Executive Summary

The Committee hold the Club's money that they have access to in bank accounts that are carefully managed.

The Committee give an undertaking to produce full audited accounts to put to an AGM once the dispute is ended.

Taking into account the recent ruling in the Court in Arona, WimPen have received well over €2 million from Club Members that they are not entitled to, a sum of money that is 4 to 5 times the income from the community of Escritura owners.

The Committee recognised that the Club Members have to contribute a proportion of this money towards the running of the resort otherwise the resort cannot function. The way for this to happen is for WimPen to follow the rules (Statutes) for the resort and work out a fair Common Parts Service Charge for the Club and the Community 1 owners (Escritura).

Introduction

This financial report is primarily going to focus on the money that WimPen are holding that belongs to Club Los Claveles (the Club), following the ruling made in the Arona Court, Tenerife on 10 December 2018.

The majority vote on the non-disclosure of the Club's finances at the 2018 AGM prohibits a full disclosure of the Club's finances. This undertaking remains in place as we are still in dispute with WimPen and full disclosure would not be in the Club's interest given Wimpen's stated intention to 'run us out of money'.

The Committee repeat the undertaking they have previously given, to produce fully audited accounts once the dispute is over so that all Members can see how the Club's money has been used.

The money collected by the Club has been used to call and hold this meeting as well as funding the Club's successful legal interventions to help secure the legal rights of all Club owners and associated costs. Funds are held in a variety of bank accounts with a substantial reserve held to contribute to the running of the resort.

Despite the Arbitrators order in August 2017 for WimPen to calculate and hand over to the Club the money belonging to the Club, they have yet to do so. At the combined Los Claveles Community 1 and Development Owners Association AGM held in June 2016 a vote was carried to separate the accounts and WimPen's accountant, Mr Monedero, agreed to action this (Verbatim Minutes of AGM), but this separation was only commenced in December 2018. WimPen continue to use any means available to them to delay giving the Club the money belonging to the Club.

Make-up of the resort

When phase one of Los Claveles was being sold back in 1988-9, this was done under the Spanish Escritura system. This gives a high level of security for Owners but it is expensive to transfer the ownership of the Escritura. This is known as Los Claveles Community 1 which is governed by Statutes set up under Spanish Law.

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A total of 24 villas were sold in this way giving a total of 1200 owner weeks. Over time this number has reduced as individual weeks have been changed to Club weeks. The last accurate figure the Club have, is that there are 874 Escritura weeks remaining in the resort (Escritura AGM 2016) representing 16.65% of the resort. This ignores villa 71, formerly the Resort Manager's villa.

At the same time the Development Owners Association (DOA) was set up. This has responsibility for all the Common Areas which include the Pool, the Bar, the restaurant, footpaths, Reception, car park and Sales Office. This too has its own statutes set up under Spanish Law.

The remaining villas were sold under the Club system with a Scottish constitution. The Escrituras (deeds) for these weeks are held in trust for the Club by a trustee. There was a total of 4050 owner weeks in the Club but this had increased to 4376 by June 2016 representing 83.35% of the resort. As the Club do not have the current members register despite the Arbitrator and the Scottish Judge ordering WimPen to give this back to the Club, the Committee are not able to verify the exact number of Club Members for this AGM.

WimPen often mention the Community of Los Claveles but there is no legal definition of this in any documentation produced about the resort other than the bank account.

How the finance for Los Claveles Resort should work

Under the Statutes and Club Constitution, it is clear that each entity at the resort should have its own bank account and its own accounts produced annually. It was stated at the AGM (Page 3) of Los Claveles Community 1 and DOA held in 1992 that for administrative convenience all the money would be held in one account and one set of accounts produced. This was agreed by owners and worked well whilst there was one administrator at the resort, but now the Club has a different one this leads to immense difficulties.

The staff of the resort, again for administrative convenience, have traditionally been employed and paid by the DOA.

Under the Statutes for the DOA (Article 8.2) every year the administrator for the DOA should work out the Common Parts Service Charge for the resort. The Charge should be presented to the DOA AGM for approval and then (Article 8.3) passed to the Administrators for the Community 1 and the Club so that they can pay the appropriate amounts from the Maintenance fees they had collected. In the past this was never done as there was the same administrator for the three parts of the resort. Since May 2017 the Club have a different Administrator and the Club Chairman has written to Ivan Pengelly 3 times and to Roger Barrow twice requesting the Club be informed of the Common Parts Service Charge, but neither person has been forthcoming. The result of this is that the Club cannot contribute to the running costs of the resort at this moment in time. WimPen refuse to calculate the Common Parts Service Charge but then say 'as the Common Part Service charge has not been paid, you (Club Owner) are not allowed to use your villas without paying us (WimPen) the full Maintenance Fees'. The DOA Statutes do not allow WimPen as the DOA Administrator to collect payments directly from owners. These can only be collected by the Administrators of the Community 1 (Escritura) and the Club. The Arona

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Court judgement of 10 December 2018 reinforced these legal rules and ordered WimPen to refrain from collecting payments from Club owners.

The Current Situation

The Arbitrator ordered WimPen to hand back the money belonging to the Club by producing a bank account reconciliation showing what sums properly belong to the Club.

In their defence for the appeal to the Court of Session in Scotland, WimPen used the argument that because the Club's money was mixed in the Community Account it could not be separated. The Judge, Lord Tyre, stated *"The fact that Club funds and property may have become intermingled, in the petitioners' hands, with the property of others, is entirely beside the point: it is the responsibility of the petitioners to disentangle the Club's property and account for it to the respondents in their representative capacity."*

As discussed above, at the 2016 Escritura AGM meeting, a vote was carried to separate the accounts, but it was not until December 2018 that WimPen instructed the accountancy firm EY (Ernest and Young) to carry out the reconciliation of the Club's property. EY indicated they would finish this process by 31st January 2019 but this date has now been amended to 31st March 2019.

WimPen's Ownership

In a spreadsheet presented to the Committee on 31 March 2015, WimPen claimed to own 175 weeks but on the certificates presented to the Committee for their attempted vote at the 2018 Club AGM **all** the certificates for the weeks on the spreadsheet were dated 30th April 2015 or later. Given the numbers of weeks that WimPen claim to have held over the previous 13 years the Committee would have expected there to be a spread of dates over the years. Yes, they may have bought and sold some weeks but a spread of dates would be expected. None of the certificates dated 30.4.2015 bear a seal, thereby making them invalid, as the certificate states "the common seal..... was hereunto affixed in the presence of" but there was no seal!

The table below shows the Club weeks WimPen claimed they owned at that time.

| Year | Number quoted in AGM Minutes | Year | Number quoted in AGM Minutes | Year | Number quoted in AGM Minutes |
|------|----------------------------------|------|---------------------------------|------|------------------------------|
| 2002 | 260 | 2007 | | 2013 | 214 |
| 2003 | 330 | 2008 | 158 | 2014 | |
| 2004 | 296 | 2009 | | 2015 | 175 |
| 2005 | | 2010 | 171 | 2016 | |
| 2006 | 229 but 'abstained' on 281 votes | 2011 | 162 (100 later in same minutes) | 2017 | |
| 2007 | | 2012 | | 2018 | 210 |

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Club Cancelled weeks

The Committee has been advised that cancelled weeks would be kept by WimPen in the name of the former owner, making the Club liable for the maintenance until just before they were sold when they were put in the name of WimPen and then transferred to the new owner.

In March 2015 WimPen gave the then Committee members a list of cancelled weeks and both Ivan Pengelly and Ian Crane stated these weeks belonged to the Club.

At the last AGM held in April 2018, WimPen sent a list of proxy votes they claimed to hold, included in which were various companies across Europe that now claimed to own the weeks shown as cancelled and belonging to the Club in 2015. The Club did not agree to any alleged sale and hold the view these weeks were stolen from the Club and sold without the Club's permission. When queried where the proceeds of this "sale" were in the accounts produced by WimPen, we were told the proceeds were used "to offset old debts on those weeks" and so did not show. The proxy votes were disallowed for valid reasons and this decision was supported by our solicitor who was present at the meeting.

Club Money taken by WimPen

Under the ruling made in December 2018 by the Court in Arona, Tenerife, WimPen should **not** legally have been taking any money from Club Members or from property owned by the Club since 3rd May 2017.

The tables appended show what WimPen **are likely to have taken** since their contract formally ended on 3rd May 2017.

They assume that WimPen have rented out the cancelled/ handed back weeks that should/do belong to the Club and been paid sufficient money to cover the maintenance payment listed in column 5 and the rental profit in either columns 7 or 8.

There are a further 326 weeks that were originally Escritura that were converted to Club Weeks, exact details unknown, but these give an additional annual income of about €100,463.42 using an average for the whole of the Escritura weeks.

We can contrast this income with the income for the total number of Escritura villas of about €269,337 per year.

Other money taken by WimPen that belongs to the Club includes:

- Utility charges for Owners
- Charges for use of Safe
- Additional charges for Owners who claimed back via their credit cards
- Charge for late payments
- Administrative charges for issuing Certificates or Deed of Assignment when they are not entitled to issue them

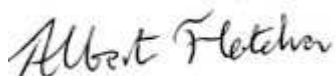
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WimPen have also spent money unnecessarily e.g. sending up to 3 registered letters annually at a cost of £7.50 each to Owners who have paid the Club putting pressure on Owners to pay them instead.

All of the list of above is hard to quantify so a precise figure cannot be calculated at this time for any of the above. The Committee know that out of the members who have paid the Club, some have also paid WimPen - in effect paying twice, some have paid WimPen and claimed back via their credit card but this leaves them with an alleged debt with WimPen, others have chosen not to go to the resort or not to stay at the resort, and others have had been denied their RCI weeks or points by WimPen. The Committee do not have accurate figures for these.

Mr Barrow in his President's Newsletter Issue 1 stated that the combined reserve fund and accumulated surplus stands at €925K. Clearly a large part of this belongs to the Club as they make up 83.35% of the resort. The DOA have no say in the refurbishment of the villas as their statutes limit them to the common parts, everything outside of the villas. (DOA Statutes 1.1).

WimPen have also "helped themselves" to €183,070 annual Management Fees which was the sum agreed for WimPen when they were the Administrator for the whole resort. This is in total disregard of the fact that WimPen are not the Administrator for the Club, who have appointed their own Administrator. At previous DOA AGM's WimPen have been asked to break down the cost to each component of Los Claveles but they have refused to do this. At the last combined Community 1 and DOA AGM, the meeting approved the spend of €183,070, so does this mean that these two groups are liable for this cost?



Albert Fletcher

for and on behalf of the Club Los Claveles Committee

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These tables show what WimPen **are likely to have taken** since their contract formally ended on 3rd May 2017.

First year from 3rd May (33 weeks)

| Villa Type | Villa Numbers | Total Number | Weekly charge | Annual Income | Cancelled weeks | Rental profit @149.50/week | Rental profit for 1200 weeks pro rata |
|---------------|---|--------------|---------------|-----------------|-----------------|----------------------------|---|
| 2 Bed villa | 5 – 13, 45 – 52, 78 | 18 | €350 | €207,900 | 38 | €5,681 | |
| 1 Bed villa | 1 – 4, 34 – 44, 53 – 70, 72-77, 79 - 82 | 43 | €300 | €425,700 | 238 | €35,581 | |
| Studio | 83 – 106 minus 4 Escritura | 20 | €249 | €164,340 | 282 | €42,159 | |
| Totals | | 81 | | €797,940 | 558 | €83,421 | 1200 x33/50 x 149.50 = €118,404 |

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Second Year for 50 weeks

| Villa Type | Villa Numbers | Total Number | Weekly charge | Annual Income | Cancell ed weeks | Rental profit for 803 @149.50/week | Rental profit for 1200 cancelled weeks |
|---|---|--------------|---------------|-------------------|------------------|------------------------------------|--|
| 2 Bed villa | 5 – 13, 45 – 52, 78 | 18 | €350 | €315,000 | 70 | €10,465 | |
| 1 Bed villa | 1 – 4, 34 – 44, 53 – 70, 72 - 77, 79 - 82 | 43 | €300 | €645,000 | 335 | €50,082.50 | |
| Studio | 83 – 106 minus 4 Escritura | 20 | €249 | €249,000 | 400 | €59,800 | |
| Totals | | 81 | | €1,209,000 | 803 | €120,347.50 | 1200 x 149.50 = €179,400 |
| Totals from 3rd May 2017 to 28th December 2018 | | | | €2,006,940 | | €203,768.50 | €297,804 |
| For each additional week that WimPen continue to defy the order they take €40,622.40 + rental of between €4,075.37 and €6,027.84 | | | | | | | |
| So to the date of this meeting they will have taken from 28.12.18 17 x €40,622.40 = €690,580.80 + rental of between €69,281.29 and €102,473.28 | | | | | | | |