

SUPERIOR COURT OF JUSTICE

5 B E T W E E N:

NELSON BARBADOS GROUP LIMITED

Plaintiff

- and -

10 RICHARD IVAN COX, et al.  
(as listed in Schedule A)

Defendants

15 M O T I O N

BEFORE THE HONOURABLE JUSTICE J. B. SHAUGHNESSY  
20 on December 2, 2009 at Whitby, Ontario

APPEARANCES:

25 H. Rubin

Counsel for the Plaintiff

L. Silver

Counsel for the Defendants

A. Roman

Counsel for the Defendants

G. Ranking

Counsel for the Defendants

E. Morse

Counsel for the Defendants

30 S. Clarke

Counsel for the Defendants

Schedule A

Nelson Barbados Group Limited      Plaintiff

**Heidi Rubin** for K. William McKenzie and Crawford,  
McKenzie, McLean, Anderson & Duncan L.L.P.

-and-

5

Richard Ivan Cox  
Gerard Cox  
Alan Cox  
Philip Vernon Nicholls  
Eric Ashby Bentham Deane  
Owen Basil Keith Deane  
10 Marjorie Ilma Knox  
David Simmons  
Elneth Kentish  
Glyne Bannister  
Glyne B. Bannister  
Philip Greaves a.k.a. Philip Greaves  
Gittens Clyde Turney  
R.G. Mandeville & Co.

15

Cottle, Catford & Co.  
Keble Worrell Ltd.  
Eric Iain Stewart Deane  
Estate of Colin Deane  
Lee Deane

20

Errie Deane  
Keith Deane  
Malcolm Deane  
Lionel Nurse  
Leonard Nurse  
Edward Bayley  
Francis Deher  
David Shorey  
Owen Seymour Arthur

25

Mark Cummins  
Graham Brown  
Brian Edward Turner  
G.S. Brown Associates Limited  
Golf Barbados Inc.  
Kingsland Estates Limited  
Classic Investments Limited  
Thornbrook International Consultants Inc.

30

Thornbrook International Inc.  
S.B.G. Development Corporation  
The Barbados Agricultural Credit Trust  
Phoenix Artists Management Limited

Schedule A

David C. Shorey and Company  
C. Shorey and Company Ltd.  
First Caribbean International Bank (Barbados) Ltd.  
Price Waterhouse Coopers (Barbados)  
Attorney General of Barbados  
The Country of Barbados  
John Does 1-25  
5 Philip Greaves  
Estate of Vivian Gordon Lee Deane  
David Thompson  
Edmund Bayley  
Peter Simmons  
G.S. Brown and Associates Ltd.  
GBI Golf (Barbados) Inc.  
10 Owen Gordon Finlay Deane  
Classic Investments Limited and Life of Barbados  
Limited c.o.b. as Life of Barbados Holdings  
Life of Barbados Limited  
David Carmichael Shorey  
Price Waterhouse Coopers East Caribbean Firm  
Veco Corporation  
15 Commonwealth Construction Canada Ltd. and  
Commonwealth Construction Inc.

Defendants

**Lorne S. Silver;** for the Defendants, Richard Ivan Cox, Gerard  
Cox, Alan Cox, Gittens Clyde Turney, R.G. Mandeville & Co.,  
20 Kingsland Estates Limited, Classic Investments Limited et al.

**Gerald L.R. Ranking and Ms. E. Morse;** for the Defendant,  
PricewaterhouseCoopers East Caribbean Firm

**Andrew Roman;** for the Defendants Eric Ian Stewart Deane,  
Estate of Colin Ian Estwick Deane

25 **Sarah Clarke;** for the Defendant First Caribbean International  
Bank

WEDNESDAY, DECEMBER 2, 2009

5 THE COURT: Right. The matter of Nelson Barbados. Mr. Ranking, I think the message got out here that I received your material, I took it home yesterday, read it, and then I was greeted with this batch of material this morning. It apparently came from Mr. Best. Fortunately the trial coordinator got a version as well, because mine just seems to come off the press in any order, where her copy was in an ordered form so that I read all of the materials - I shouldn't say - I read the letters, correspondence and the transcript as sent by Mr. Best, but I did not - other than give a cursory glance, at all of the web material, the Barbados underground, I gave it a cursory view, I don't think it merits a close review by me other than it - I suppose it's corroborative of the letter of Mr. Best in terms of what his concerns are. Having said that I take it Mr. Best is not here and he's not represented by anyone?

10 MR. RANKING: That's correct, Your Honour. Although Ms. Rubin is here, she's confronted me this morning but she's not acting, neither is her firm, acting for Mr. Best.

15 THE COURT: I'm sorry, Ms. Rubin?

20 MR. RANKING: Is here, but she has confirmed to me this morning that neither she nor her firm are acting for Mr. Best.

25 THE COURT: Just so I get things, I'm getting old, so you're from Mr. Duart's firm?

30 MS. RUBIN: Correct.

5  
10  
THE COURT: Got it. Well, I guess when I received your material yesterday I thought, well, this isn't anything terribly different than what I do see from day-to-day and week-to-week, and then I get this other batch of material today and I understand you fished out with the trial coordinator - sorry, with the court clerk the amended notice of motion and reply motion record of the defendant's for some reason, I did not see to go through that, I thought if there's a reason you'll send me there.

MR. RANKING: Yes.

15  
20  
25  
30  
THE COURT: And before I forget, just before I forget, we're moving. As you know we're leaving this courthouse and we should be moving about, oh you can get the exact date, but I'm just going to say ball parking around the 20<sup>th</sup> of February. I have segregated - if you go back into the boardroom and I'm going to invite you to go back into the boardroom, I segregated what I think are the cost measures as well as those tapes and recordings from the Barbados of the examinations. I've segregated them. I'm at a point though where I got a nice shiny new office and I don't have a boardroom anymore that is adjacent to my chambers. I looked at it Friday. So, I think a lot of those boxes, which I will - I believe should be sent back, I'm going to let you look at them before you leave today, I want to send them back to Barrie. It looks like about three cases of materials has to go with me

5  
10  
15  
20  
25  
30

to the new courthouse, but I'm getting into the position where we've got to start thinking about where files are going to rest, and as I say, I don't have this - the luxury of this extensive boardroom where I could - I've sort of stacked boxes for some time. So, before you leave today, please, take a look at that and I'll mention it to the registrar and she can point out to you what I think should be sent back to Barrie. All right. So, with no Mr. Best here and it's now twenty minutes to eleven, what are we going to do today? I'm anticipating you're going to ask to arrange an appointment for a motion for contempt.

MR. RANKING: Your Honour, I have prepared a draft order which I've shared, obviously, with all counsel and although counsel for Mr. McKenzie did not represent Mr. Best, she has no difficulty with the terms of this order. Let me just take you through it in terms of what I am endeavoring to accomplish today.

THE COURT: And just before I forget, we do see contempt, frankly, more often than I'd like up here particularly because we do family cases, but on contempt there has to be proof of personal service.

MR. RANKING: Yes, I understand and what I'd like to do, and in some respects I actually had planned to spend about half an hour going through the history of this matter before speaking to the order, but I think that given the fact that Mr. Best isn't here and I would

like to give you a roadmap of the order that I am seeking and then perhaps with your indulgence I'll go back and give you history as to why I think this order is appropriate.

THE COURT: I think that's an appropriate way to approach this.

MR. RANKING: But let me say a couple of things; first of all, I'm not seeking contempt today and there was short service of these materials, because we actually asked Mister - as you will hear Mr. Best did not attend on the 17<sup>th</sup> of November. We then, Mr. Silver and I, wanted to try to avoid a contempt motion and we therefore wrote to him and asked him to come back on the 25<sup>th</sup> of November and Mr. Best then failed to attend on the 25<sup>th</sup>. By reason of having given him the second indulgence we were pressed to be able to get out this contempt motion in time. So, what I propose to do is this; I would like to have an order validating service of the motion that is before you, and then permitting us to serve the contempt motion by means of an alternative to personal service at the Kingston address, and the reason for that, Your Honour, is that - I'm going to take you through, which is very important, and that's why I do need to take you through the history, is despite extensive work and significant funds that have been expended by our firm and our client, we can't find Mr. Best and it's one of those invidious, and I don't use that word lightly, situations where Mr. Best at his will can write

to counsel, can make frankly defamatory remarks about Mr. Silver and I to the court without any affidavit evidence, and yet hide away somewhere and yet then expect us to jump over hoops and bring motions and keep coming back and bothering this court and your valuable time, which is indeed, as I say in my respectful submission, invidious. So, I think that when I've gone through the record of the attempts that we've made and the efforts at Mr. Best to avoid detection and most importantly, and I say this with the greatest of respect to the whole administration of justice, the fact that we know Mr. Best to be aware of the fact of what's going on in this court and his letter of November 16<sup>th</sup> is very telling. The fact that we know by reason of that fact that by going by way of substitute service he does get notice that this is one of those rare cases where an order for substitute service of the contempt motion is, indeed, appropriate. So, we will be seeking that and I will dare say that if the court doesn't exercise it's discretion to permit substituted service that we really have reached a situation where Mr. Best, though obfuscation and delay has, in fact, achieved the ends which he intends which are a hundred and eighty degrees opposite to the ends of justice. So, that deals with the backdrop for the order for substituted service.

Now, the next part of the order and you'll have



seen this from the notice of motion is that I am not asking Your Honour to give us a date for the contempt motion as the next date. Rather, and again because of the very peculiar, if I could call it that, circumstances of this case I'm asking for an order that Mr. Best appear in this court before you to answer all proper questions which I or Mr. Silver would put to him and this is set forth in paragraph 3 of the order, Your Honour, and if he shows up - and so what I've done is I've set this forth in terms of these are all the standard questions that we've asked and tried to have answered on any number of occasions previously, but what I'm essentially endeavouring to do is to have you order today that Mr. Best attend here on a date convenient to Your Honour to answer questions, and I shouldn't think that our questions will take more than - even with objections, should Mr. Best see fit to retain counsel, it wouldn't take more than an hour. Either the questions are relevant or they're not relevant. Either they're privileged or they're not privileged. By coming back to this court Mr. Best can purge his contempt, he can answer the questions and we can move on with it. The benefit of that is that it moves matters forward in an expeditious manner. It allows rulings to be made. It allows you to make an assessment of credibility and we can get on with it. Any option other than that, in my respectful submission, just puts us back to the position that we were

5  
10  
15  
20  
25

already in where Mr. Best has demonstrated he doesn't want to attend, but what we then do is I then have fashioned the order to say that if Mr. Best doesn't attend and he will now have notice, assuming this order were to go in the form that I've provided, or in essentially the same form, that I have attached a Schedule A, a warrant, for his committal. So that we've had the failure to attend on the November 17<sup>th</sup>, we then have an order validating service of this motion record. This motion, if successful, would then afford an order that could be served by an alternate to personal service requiring him to come back on a date convenient to Your Honour and if attends then I can say without a doubt the contempt motion will not proceed. Mr. Best can answer the questions, we can get the evidence, we can have production of the books and records and we can move on. If he fails to attend it's at that point in time that a warrant should issue and what I say is the elegance of this process is that Mr. Best knows four-square by reason of this order that a warrant will issue on whatever date this court might determine to be appropriate for the return of the motion.

MR. SILVER: If he doesn't attend.

MR. RANKING: If he doesn't attend, yeah. So, that is how I fashioned it and I've obviously spoken to my co-counsel and Ms. Rubin and Ms. Rubin's concern, as she's expressed it to me, is as long as there is sufficient time between

30

today and the date of any attendance that she has no difficulty with it.

MS. RUBIN: Sorry. If - Your Honour, if I may make one quick submission at the end of Mr. Rankings submissions...

MR. RANKING: All right.

MS. RUBIN: ...I'll express my concern.

THE COURT: Yes.

MS. RUBIN: Thank you.

MR. RANKING: So, that's the overview of the order, Your Honour. So, with that by way of the overview if I could go back and deal with the facts and why I respectfully submit that the order I've just taken you through is indeed the appropriate order.

THE COURT: I believe this is an appropriate time for me just to raise a point that you or Mr. Silver want to argue. I have some difficulty with paragraph 4. I think that what should happen is that a hearing then takes place with respect to the issue of contempt. In other words, there has to be a specific finding and the fallback position, if that hearing is convened, it's not - there's no representation by Mr. Best, then the court may be in a position to issue a warrant, but I mean, to issue a person's warrant for arrest almost as a fallback, I don't feel comfortable with. What I would be comfortable with is if he fails to attend at the hearing of the contempt motion and after the hearing has been conducted then this court will be in a position to entertain a

5 warrant for arrest of Donald Best in the form -  
if you even want to attach Schedule A, that's  
fine, but I want to - for the purposes of an  
appellant review to indicate clearly that a  
hearing was conducted, because the very fact  
that he may potentially be in contempt, there's  
got to be a finding, and based on the finding  
then there's certain ramifications that take  
place.

10 MR. RANKING: The way - and I hear Your Honour,  
the way in which we fashioned it was intended  
that the warrant would be - would not require  
him to go to jail. I mean, he may have to be  
held in custody, but we were intending the  
warrant to require him to come give his evidence  
15 in court. My - the end....

20 THE COURT: Well, he's going to be arrested and  
then he's going to be brought before the court  
and then - hopefully on an expedited manner, and  
then at that time the court will determine  
whether his incarceration has to continue. I  
must also tell you that in the contempt process  
generally what has happened is they're brought  
before a justice of the peace and effectively  
25 there's a determination whether they should then  
be released on their own recognizance or  
released on a recognizance, et cetera, et  
cetera. I don't want to get into all the  
technical details, I'm just thinking I wanted  
30 the appearance of justice to be seen in this  
case, notwithstanding what may be the heartaches  
of the various defendants and their counsel in

relation to this matter. I still want the process to appear to be fair to Mr. Best in all respects.

MR. RANKING: I appreciate that, and take no issue with it. So just - so that I understand, you would prefer to see paragraph 4 drafted that there would be - if he fails to attend there would then be a contempt motion that would....

THE COURT: There will be a contempt hearing.

MR. RANKING: A contempt hearing.

THE COURT: And the court after...

MR. RANKING: After the - submit....

THE COURT: ...may - the court may after hearing the issue...

MR. RANKING: Right. Yes.

THE COURT: ...issue a warrant for the arrest. I mean, I almost don't like the nomenclature that I'm - it's a foregone conclusion I'm going to order his arrest.

MR. RANKING: Right.

THE COURT: If I had my druthers, to be quite candid with you, I'd prefer that the court will conduct a contempt hearing, period, and the pieces fall where they May.

MR. RANKING: And in what - just....

THE COURT: You - and don't attach Schedule A, but you can send Schedule A onto Mr. Best. It seems to me that he has at least an address that he's getting - he says he's getting information, or letters forwarded to wherever his present location is. Of which - I don't know what to make, if any, of that because none of it's in an

5 affidavit form, so if Mr. Best was here and the record will reflect that without it being in an affidavit form I don't see the - how I can possibly deal with anything that he says in this - in his correspondence, quite frankly, and I'm less than pleased, and I'm sure the court staff is, just to have our fax machine cluttered with blog entries.

MR. RANKING: Okay.

10 THE COURT: I mean, I've expressed my view about blogs before several times in the course of these proceedings and frankly everyone - well, some individuals seem to think they're all about truth and they - they're the strangest things that I've ever seen. I mean, there's comments by people called "Anon" and "Pat", the only Pat I know is my wife, Pat, and apart from that I'm really interested in the rest of the blogs. I'm speaking to the converted, but I think I should state again and again, these are nonsensical items to be sending to the court, and it must be over 60 pages of material was sent, not happy about it, but he's not here. But I've expressed on the record about - my views on the blogs. Go ahead.

25 MR. RANKING: Your Honour, I haven't conferred with my co-counsel, but I - we will re-fashion the order.

THE COURT: I think it would be better.

30 MR. RANKING: Yes.

THE COURT: The fact - I don't even - I frankly don't even like the Schedule A, I just tell you

why because you can send it to him as to what you're seeking, whether I'm going to grant it remains to be seen after a contempt hearing.

MR. RANKING: All right. Can I - can we deal with the form of the order after I had a chance to confer with my co-counsel...

THE COURT: Sure. Sure.

MR. RANKING: ...and go back and just deal with, really, the history of the matter and I think it is important to go through the history, but I think before I do that I hope that the court clerk put before you the November 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup>?

THE COURT: Yes.

MR. RANKING: And the other one that you'll need, Your Honour, just so that you have it before you is, as well, the motion record for today, and the December 2<sup>nd</sup>. Those are the two motion records I'll be referring to.

THE COURT: Got it.

MR. RANKING: But - and again, so this is without a doubt, and Your Honour has lived this case as long as we have, but you probably don't need this, but I'm going to provide it to you to say...

THE COURT: No, I think it's important. I think it's important.

MR. RANKING: ...why I also think that Mr. Best is so important, all right? Because I don't want you to think that we're off on a frolic, we're not, and the defence think that the evidence that we may get from Mr. Best will be

5

10

15

20

25

30

exceedingly relevant and both in terms of the documents and his oral evidence, and the reason is as we see it Mr. Best can either go down one of two paths depending on his evidence. The first path is that this entire action was a sham. We know as a matter of fact that Nelson Barbados was incorporated by Mr. McKenzie's firm. We know that it's one of the few connections to Ontario, and we suspect that it's a company without assets. What we don't know, and we also know that despite repeated attempts we have been stymied at every turn when seeking to obtain information with respect to Nelson Barbados, its business, and the nature of its operations, books and records, anything and anything. And if, in fact, it is a sham that thing goes directly to one of the paragraphs in the statement of claim wherein it was pleaded that Nelson Barbados acquired an interest in the shares of Kingsland and we have reason to believe that shares in Kingsland actually do have value. So, either this was a sham and it was merely set up for the purposes of the litigation, or on the other hand, depending on what the books and records disclose, and the evidence of Mr. Best, we may in fact find security and information with respect to the shares. And we may then be able to determine the whereabouts of the shares, how they are held and make inquiries with respect to those shares on the basis that, in fact, they have value and they will be shares which can be attached and



which will stand as security for the payment of any cost award this court may make. Now as between the two of those our concern, not lightly held, but our concern is that Nelson Barbados is a sham and we reach that view not only based on the refusals, whether at the cross-examination of John Knox on the 4<sup>th</sup> of November, whether at the examination of Mr. Best by Andrew Roman, but perhaps most importantly based on the fact that Mr. McKenzie was unable to answer the questions of Your Honour when you were fair to a fault and you asked him not once, but at least twice if not three times to either bring the documents that would answer these questions or to have Mr. Best file an affidavit, and as Your Honour will well recall neither was provided. I will go through, momentarily, the difficulties we have then found, or encountered trying to find Mr. Best, but I also pause to observe the legitimacy of this action when one recalls and I will do - the cost motion to be heard in February, I will do - I'm going to treat this case like a fraudulent conveyance case, and I'm going to have the badges of fraud articulated on a chronology for Your Honour. But when I look at Mr. Best I kept asking myself why wasn't he put forward as the affiant? He's the sole officer and director of Nelson Barbados and yet we have John Knox who was put forward, and at best we can determine Mr. Knox having no basis at all as an officer or director of Nelson Barbados, and someone who, when Mr. Silver asked

the question on a cross-examination, Mr. McKenzie refused to say whether or not Mr. Knox's questions, or his answers, would bind the company. Highly, highly suspicious. In any event, the concerns that we have - and just to really deal with it, is we're seeking costs against Mr. McKenzie personally under Rule 57.07, but the investigation that we have of Mr. Best and Mr. McKenzie's participation, if any, with respect to asserting the claim as he did, depending on the facts Your Honour may well expose him to a cost award completely aside from the provisions of Rule 57. So, that is why, in our respectful submission, Mr. Best is an integral part of the scenario that is currently unfolding.

With that by way of a brief introduction, if I could then turn you to the amended notice of motion and reply motion record of the defence and I'm going to ask you to turn to Tab 3 which is the affidavit of one of our students, Sebastien Kwidzinski, and I have not taken you through any of this material, and I'm not going to take you through all of it, Your Honour, but I do need to take you through some of it to demonstrate some of the difficulties that we've encountered and the steps that we've taken, which is in fact, got us here today. I don't know that you need to reference it in particular, but I did ask Mr. Kwidzinski, for the purposes of convenience more than anything

5  
10  
15  
20  
else, to set forth at the bottom of page -  
sorry, the top of page 3 in paragraphs 5 through  
13 the various attempts that we have made both  
personally and then through the court to obtain  
information. So, that is just a helpful  
summary. I think Your Honour is aware of that,  
I'm not taking you through it, but that is where  
we were attempting to obtain information. In  
addition though, I would ask you - and this is  
just by way of example and it's more to  
exemplify, and I speak to Ms. Rubin about this  
earlier in terms of the frustration that counsel  
for the defence, but to exemplify how that  
frustration arises. If I could ask you to turn  
to Tab C; Tab B are all the questions refused.  
You're aware of those. You may not have had  
brought to your attention the examination that  
Mr. Roman conducted when Mr. Best, in fact,  
appeared and that appears under Tab C, and you  
will see at the top of page 2 under that tab....

THE COURT: Just one second here. What - I'm  
sorry, what page are you at now?

MR. RANKING: Tab C.

THE COURT: Yeah, I got that.

MR. RANKING: Page 2.

THE COURT: Page 2.

MR. RANKING: And it's just to direct your  
attention to the fact that this is an  
examination of Donald Best at the top of the  
page...

THE COURT: Yes.

MR. RANKING: ...taken on March the 20<sup>th</sup>, 2009.

THE COURT: Yes.

MR. RANKING: So, this is where Mr. Best, in fact, attended in Barrie and if you then turn to page 5 you'll then see the difficulties that Mr. Roman faces with the very first question. In Question 1, "Just for the record could you state your full name and address, please?" And then Mr. McKenzie doesn't even allow Mr. Best to answer that. "His name's Don Best, we all know that." "Do that in two parts." "Full name?" "Don Best." "Do you go by Don or Donald?" "Don Best." "Okay, and your address?" Answer, "Now sir" - sorry, "Sir, your client Ian Deane is the B-W-W-R person." "That's not my question." "Threatened the stock, threatened the witnesses." "You're not giving me your address, sir." "Let him finish his answer." What happened here was Mr. Best was coming to give a speech and if we turn to the beginning of the middle of next page, he says he can't possibly give him the address, he can't. And it goes on. The entire examination, Your Honour....

THE COURT: I mean, I had a look at this before, I guess in preparation on the last occasion when I thought I was going to hear this. It looked familiar and then I see my markings in the materials, but go ahead. Yes.

MR. RANKING: All to say impossible to get information with respect to Mr. Best, and so, that is where - we examine him, or Mr. Roman examined him and I haven't taken you to the earlier cross-examinations of John Knox where

Mr. Silver and I have tried to obtain that information, you're aware of that. I then write to Mr. McKenzie, my letter appears - one of my letters appears under Tab B where I'm basically saying, you know, "Could you please confirm that all my materials are being served on Mr. Best, and in the alternative please give me Mr. Best's contact details including address, fax, email", and the response I obtained is under Tab E where Mr. McKenzie simply says, "I note that normal practices is to send documents to the director of a company at his listed mailing address and you've apparently failed to do so. I take it that you're not intending to reach the director of the corporation, but rather to frame things as if they make me responsible for your failure and require me to do things which I'm not required to do." And then, Your Honour, my letter - my response goes back saying, "Please give me the details", and that is also under Tab E. If I then go back to Mr. Kwidzinski's affidavit I've now reached the point where we do not know where he is and as a consequence I ask Mr. Kwidzinski to begin taking steps to try to locate him, and Mr. Kwidzinski is not terribly successful and you will see that at the end of the day we have to retain a private investigator, and the affidavit of the private investigator appears under Tab 4, which is the very last tab of the brief. I'm going to ask you to turn that up. This is the affidavit of Jim Van Allen and he sets out his background and

experience at paragraphs 2 through 5, but I can - let the court know this is an experienced private investigator and paragraph 5 indicates that he's a graduate of FBI National Academy program in Quantico. He is a presenter at the U of T, the Laurentian University, Trent University. He is a very experienced private investigator, and he indicates at paragraph 6 that he was contacted by me and I wanted to locate Mr. Best so that he could be served with a summons to witness for the purposes of having his evidence available for use at the cost motion. Now at this time we were hopeful that the cost motion would proceed in November. Mr. Savinski (ph) [sic], Kwidzinski, I should say, provided some information dealing with the addresses we had been able to locate, and also the motor vehicle search which we had been able to locate and I'll come back to that, but what Mr. Van Allen then says in paragraph 9 is that, "Internet searches did not disclose any information." In paragraph 10, "Even though Mr. Van Allen was able to determine date of birth, driver's licence, unable to do anything else." Importantly at paragraph 13 through 15 he states that in his experience in conducting, supervising and assisting many hundreds of investigations it is his believe that Donald Best is intentionally and deliberately concealing and obscuring his current residence address, and he then says that he believes that Best has deliberately used false addresses to

prevent him from being located by conventional methods. And concludes, and this is somebody with considerable experience, "that few people demonstrate the strenuous efforts over a number of years to create and convey false address history as reflected by the repeated use of false address, and/or post office box numbers used by Donald Best." He's among very few individuals to go to this length to conceal his address, and I just pause to observe that that very same comment has been confirmed in the letters to the court. We see a post office box, we do not see a fax number, email, phone number, nothing. So, those are the steps that we took, and we then get to the stage where we can't find him, we can't serve him with a summons, so we then say, "All right. What's happening with respect to Nelson Barbados generally?" And that's where we get to the order of Justice Eberhard, and Justice Eberhard issues her order and that order indicates that service should be made at 427 Princess Street, Suite 200, Kingston, Ontario. And for your bench brief, Your Honour, that appears under Tab N, as in Nancy, of the bigger brief and you'll see paragraph 2 of that order. Now, I also pause to make this statement and perhaps again it's stating the obvious, one should have thought, and again this will be another badge of fraud, Your Honour, one should have thought that someone responding to requests of the defence for costs in excess of well over a million

dollars would have appointed counsel. We're seeking - this supposedly is Mr. Best's company, Nelson Barbados, and we're seeking costs against Nelson Barbados and he's on notice costs against him, but rather than appointing new counsel, he doesn't do that. He, again, does not come forward and Mr. McKenzie is required to get an order removing his firm as the solicitors of record and for the first time we see this address in Kingston. Now, when I got that address what I did was I went back to Mr. Kwidzinski and I said, "Would you please find out what's going on?" And my student sets forth what he did in paragraph 21. He indicates that shortly after his discussion with me I asked Mr. Andrius Pulutz (ph) an acquaintance of mine in Kingston - I'm sorry, Your Honour, I'm at paragraph 21 of Mr. Kwidzinski's affidavit under Tab 3.

THE COURT: Yes.

MR. RANKING: And what he says is he asked his friend to go to 427 Princess Street to determine if Nelson Barbados was, in fact, operating from Suite 200, and he's informed by his friend and believed that he went there on September the 26<sup>th</sup> and made the following observations; that the building is a UPS store and attached as Exhibit O is a copy of a photograph that was taken, and if you just turn up Exhibit O it's a picture of a UPS store. There is no business that is operated from that store and, in fact, when he made inquiries all of the so called suites are,



in fact, just post office boxes. So, let me pause there and then take you to - I'll come back to this motion record momentarily, but to finish the chronology dealing with the UPS post office boxes if I could ask you to pick up the December 2<sup>nd</sup> motion record, because what we then determine is what I suggest and respectfully submit to be incredible, and the reason I say that is that Mr. Butler, an associate at our firm, I then asked, "Okay, would you please" - and you'll recall that Mr. Butler filed an affidavit because we sought production of the non-parties and you ordered such production. He goes through that at the beginning of his affidavit, to say that he got in touch with the UPS stores and served the orders, but I ask you to turn to paragraph 6 on page 13 of the record, and I'm going to read to you paragraph 6 and 7. He states, "On November 12<sup>th</sup> Mr. Butler received a fax from Darren which included documents relating to Box 200 of the UPS store. The customer's name for that box is Nelson Barbados Group L-T-D. I called and spoke to Darren immediately after receiving a facsimile, Darren confirmed that the owner of the Toronto UPS store, Dave Delizer (ph) was responsible for activating Box 200 at the Kingston UPS store on September 3<sup>rd</sup>. So - and I'm going to take you to the documents momentarily, Your Honour, but what happens here is there's inordinate delay on the part of Nelson Barbados to appoint counsel and finally Mr. McKenzie has to move for an order

removing his firm as solicitor of record, and I find it more than coincidental that the order is issued by Justice Eberhard on September 15<sup>th</sup> only two weeks after the very post office box had been opened on September 3<sup>rd</sup>. One of the questions I'd be asking of Mr. Best is, "Mr. Best, why did you open a post office box?" And, "Why was it opened on September 3<sup>rd</sup>?" And, "Why was it opened in Kingston?" And, "Who was it you were trying to avoid?" But it gets better, if we learned in paragraph 7; Darren also confirmed that pursuant to the instructions provided at the time, Box 200 of the Kingston UPS store was activated, the Kingston UPS store automatically forwards all mail received at Kingston UPS to the Toronto UPS and bills the credit card number provided in the file. A complete ruse. Just so that I don't pass over it, I also go back to the last sentence of paragraph 6 to confirm that it was Dave Delizer (ph), the owner of the Toronto UPS store that, in fact, opened the Kingston UPS box. Not even Mr. Best himself. If I then turn to the top of page 4 you'll see that information as attached as Exhibit B, and if I could just take you there momentarily, that's the information we received and I just want to highlight a number of things for your brief, Your Honour, the cover page from Darren to Mr. Butler obviously comes from the top left hand corner of the Princess Street address in Kingston, but if you look to the top of page 42, the mailbox service agreement, you

will see just beside the numbering of the page at the very top beside Number 42 you'll see Suite 200, which is clearly the box, or the contract for the box, for which substituted service that was provided in Justice Eberhard's order. But if I then ask you to drop to the bottom of the page you will see the customer's initials are "DD." You'll see type there, and again that is confirmatory of what Mr. Butler was told, that is was Dave Delizer (ph), and that's in paragraph 6 of Mr. Butler's affidavit and the address for service is - for Nelson Barbados is on the right hand side. And then if you turn the page, again you see at 43 dropping just about a quarter of the way down the page, the customer, again Nelson Barbados Group, and the signature Dave Delizer (ph) and there the date is September 3<sup>rd</sup>, 2009, and I note in passing that if you look at the middle of the page the UPS store, in fact, has a telephone number and, in fact, does have an email, but none of that information was apparently used by Mr. Best, or provided for the purpose of Justice Eberhard being able to serve by way of an email address to the UPS store. And then I also observe in passing the last paragraph above the two virtual boxes which indicate two forms of identification are required, one of which must be a photo ID, and clearly because Mr. Best had Mr. Delizer (ph) from the Toronto office open the box, there is no information with respect to Mr. Best. He had no identification provided

5  
10  
15  
20  
whatsoever. And then really the same information is provided on the following page, that just deals with the courier address. You'll see again, Dave Delizer (ph), in this case it's September 2<sup>nd</sup> as opposed to September 3<sup>rd</sup> for the Nelson Barbados Group and there's a credit card number to the left, which provides some credit card for the purposes of billing. And the final point is to take your attention, Your Honour, to the - page 45 where it's been - and that is titled the mail forwarding worksheet, and you will see the suite number which is 200, which is confirmatory of the mailbox we're talking about. The customer name, Nelson Barbados Group Limited, and the forwarding address is 1225-250 The East Mall. So that what happens here is anything that goes to Kingston is immediately re-directed to the UPS store at - it turns out to be Cloverdale Mall, and if you go back to paragraph 9, Your Honour.

THE COURT: Of whose?

MR. RANKING: Of Mr. Kwidzinski's - excuse me, Mr. Butler's affidavit at page 14 of the motion record. We're here talking about the Toronto UPS store, Mr. Butler got in touch with Mr. Delizer (ph) and he confirmed that he activated the mailbox at the Kingston UPS store at the request of the registered owner customer for Box 1225.

THE COURT: To what paragraph are you referring to?

MR. RANKING: Paragraph 9, Your Honour.

THE COURT: 9.

MR. RANKING: And then just to finish off the chronology to tie Box 1225 back to Mr. Best to show the intricate, or elaborate, scheme that he's put together, if you look to paragraph 12 Mr. Butler then contacted Mr. Delizer (ph) who sent him an email which attached the documents regarding the 1225 at the Toronto UPS store. Although the documents contained - excuse me, although the information contained in the document states the box number is 225, Mr. Delizer (ph) confirmed to me by phone that there's no box 1225. The box was activated by Donald Best on behalf of the Nelson Barbados Group - excuse me, Nelson Barbados Group Limited, I apologize, Your Honour. This is a second company, which is Mr. Best's company which does not have the word "Barbados" in it in 2007. In that email - and I'm going to ask you just to - again for your bench brief to circle, or to note, the similarity in names between the Nelson Group, that is Mr. Best's company that opened this mailbox in 2007, and the Nelson Barbados Group, we're going to come back to that, but that is then under Exhibit G and Your Honour if you turn up Exhibit G the emails appear at a pages 63 and 64, but the actual agreement itself appears at page 65 through 67, and you'll see that at the top of page 65 there's the suite number, 225, and on page 66 you will see that there is a signature under

which the name, "Donald Best", has been printed.

MALE VOICE: He doesn't sign it himself.

MR. RANKING: Right, and you will note that even that document was not signed by Mr. Best, it was signed per T-N-G-L-T-D.

FEMALE VOICE: That's in 1997.

MR. RANKING: Right. That's in 1997, and I think that....

THE COURT: You're saying the signature - there's initials and then there's per "T-N-G-L-T-D"?

MR. RANKING: Yes.

THE COURT: And do we know what that means?

MR. RANKING: I can only surmise - if you turn the next page you'll see under other authorized names under this agreement there's the Nelson Group Limited. So, I'm assuming that it's the Nelson Group is the full name for T-N-G-L-T-D, but that's my assumption and Ms. Rubin points out correctly that this box was opened in 1997 and as a consequence, I think, that Mr. Butler's statement in paragraph 12 of his affidavit that it was opened in 2007 is likely inaccurate. So, just to summarize then....

THE COURT: Has anyone ever searched the Nelson Group?

MR. RANKING: Yes.

THE COURT: And what did that turn up?

MR. RANKING: It's Mr. Best's company.

THE COURT: All right.

MR. RANKING: And I can take you to that, Your Honour. Let me just finish the....

THE COURT: Yeah, go ahead.

MR. RANKING: The point that's been made is - and I know it's not lost on you is two weeks before Justice Eberhard has to make an order removing Mr. McKenzie's firm there is a post office box opened by someone other than Mr. Best, but clearly on his direction, because it came from Dave Delizer (ph) who was the individual at Toronto who had opened the Cloverdale Mall post office box. It's opened and all the mail that goes there is immediately re-directed back to Cloverdale Mall, and I pause to make this observation; Mr. Best clearly doesn't know, hasn't come to court, to see all the materials, but he's complaining and goes on at great length at how he hasn't received materials, and I have affidavits of service for everything that was served. And he hasn't received the materials in a timely manner, because they go to Kingston and then they go from Kingston back to Toronto, and he's not in Kingston to pick them up. And it's for that very reason, Your Honour, that you will see when I get to the actual service of some of the other materials, that I began mailing information directed at Cloverdale, even though that wasn't required by the terms of the order, I started mailing it to him at Cloverdale. It may not - let me just see if I can find - I have searched, and I can tell you as an officer of the court, Your Honour, that the Nelson Group is a company of Mr. Best's, yes.

THE COURT: I take it from you. If you tell me that, I'm satisfied.

MR. RANKING: It - I found it. It appears under Tab P, as in Peter, in the larger volume, Your Honour, and it's worth turning it up, because again this confirms the....

THE COURT: The East Mall address.

MR. RANKING: Beg your pardon?

THE COURT: It has as the registered office an address, 122, dash...

MR. RANKING: Correct.

THE COURT: ...250 The East Mall.

MR. RANKING: Correct, and if you look to the second page you'll see that here we have his middle name for the first time, Donald Robert Best. That previously had not been provided. And I think that the - to be fair to Mister - date of incorporation was 1993.

THE COURT: What is that address on Dunlop Street in Barrie? Is that a residential address?

MR. RANKING: Which address are you looking to....

THE COURT: I'm looking at the corporation profile report under "P", page 2, the administrator Donald Robert Best, the address 113 Dunlop Street, Barrie, Ontario, Suite 1928.

MR. RANKING: That address we searched and if you turn to Mr. Kwidzinski's affidavit at paragraph 36, Your Honour...

THE COURT: Yes.

MR. RANKING: ...Mr. Kwidzinski goes through the



- first of all he identifies the Nelson Group Limited...

THE COURT: Right.

MR. RANKING: ...then he talks about the addresses at 113 and 122-250 The East Mall, and he states in paragraph 37 he conducted web searches of 113, he placed a call to the number provided for the business and based on his inquiries determined that the salon business did, in fact, operate from that address, but there was no other active business carried on from the premises. The individual further stated that their landlord resided in the upstairs apartment, and the upstairs apartment was also used - also used the address of 113. We weren't able to find any current information that that address was related to Mr. Best...

THE COURT: All right.

MR. RANKING: ...and again, paragraph 38 just deals with the Cloverdale Mall address for the UPS post office box in Toronto.

THE COURT: Right.

MR. RANKING: The only - the other point that I did want to just take you to before I turn to the association between Mr. Best and Mr.

McKenzie is at page 14, paragraph 40, of Mr. Kwidzinski's affidavit. We deal with the motor vehicle search, and again not to state the obvious, but the reason we're going through all of this, Your Honour, is to demonstrate the lengths to which we've taken to try to find addresses where we might be able to serve this

individual, and so, what would customarily disclose Mr. Best is we did the search and it revealed the address of 122-250 The East Mall, apartment 1225, and if you turn that up at Exhibit S, which is the search, you can see again Don Best and the only address we have for him was at the East Mall. We were able to determine, however, from that search his date of birth and his driver's licence number, and I pause to observe Mr. Best seems to be all perturbed by the fact that this information - and I have no idea, Your Honour, how the information got posted on whatever blog it's posted on, but this is information that our clerks were able to find. So, I'm not exactly sure why he is raising such a concern with respect to that matter, which, as I say, had no idea how it was posted, but that then concludes what Mr. Kwidzinski was able to locate and it was a consequence of when hit a brick wall, and I took you to it earlier, that we retained Mr. Van Allen and then Mr. Van Allen was not able to find Mr. Best either. Now, the only other thing I want to do before putting down this motion record is again - and this goes back to factors, and it's only a factor, but it's something which I think is important, and that is the association between Mr. McKenzie and Mr. Best, and that association is set forth at paragraphs 22 through 35 and I'd like to take you through those paragraphs and this is simply information, Your Honour, that Mr. Kwidzinski was able to

5 obtain by doing various searches electronically  
on cases that had been reported. You'll see  
that Mister - starting at paragraph 22 on page  
8, Mr. Kwidzinski was able to determine that the  
association between Mr. Best and Mr. McKenzie  
dates back some 13 years, and he then sets out  
his legal research and he goes from the earliest  
case to the most recent, and if I could just  
10 highlight a few points as we go through; in the  
ExpressVu case v. Norsat International and I've  
tried to highlight and bold this for Your  
Honour.

THE COURT: Right.

15 MR. RANKING: Mr. Best was one of the affiants  
on behalf of the plaintiffs in that case and Mr.  
McKenzie represented the plaintiffs in that  
case. In WIC, paragraph 26, Mr. McKenzie sought  
to introduce fresh evidence in the appeal and  
part of the fresh evidence was evidence of Mr.  
20 Best. A different case at the top of page 10,  
but one for Bell ExpressVu involved in appeal at  
the Supreme Court of Canada. Again Mr. McKenzie  
was counsel and he presented affidavit evidence  
of Mr. Best and cited him in his factum. And I  
25 have no doubt that Mr. Best was doing some work,  
whether investigative work dealing with piracy  
and satellite dishes and things of that nature,  
but what this goes to is an association. Now,  
this is where I pause when I go to Kudelski  
30 (ph), because here we see Mr. McKenzie  
represented the plaintiff as well as Mr. Best,  
and the Nelson Group Limited, and interestingly

5 this was a case where the defendants were able  
to make out a case for substituted service on  
Mr. Best and the Nelson Group. So, something  
with which Mr. Best has had, certainly, some  
association of substituted service and knowledge  
of not being too easy to find, and at paragraph  
10 29, "the defendants could not locate Mr. Best."  
And surprisingly I look at paragraph 29; when  
Mr. McKenzie, not unlike the questions that Your  
Honour asked him with respect to "Please produce  
the documents", the court states at paragraph  
26, "Mr. McKenzie when asked by me whether he  
knew Mr. Best was, indicated he believed that  
Mr. Best was now in Thailand." And then  
15 paragraph 30 we talk about the corporate  
profile. There is another case where Mr.  
McKenzie was counsel, this is in paragraph 31  
the Kudelski (ph) case reference to Mr. Best,  
sought an order striking out - or staying an  
20 amended third party notice. The bottom of page  
33 in the Kam-T Speed (ph) case, the bottom of  
the page, Mr. McKenzie represented the plaintiff  
again and Mr. Best was involved in an accounting  
investigation on behalf of the plaintiff. And  
25 finally in the Love and News DataCom case (ph)  
and appeal and Mr. McKenzie acted as a  
representative to third parties which included  
Donald Best and the Nelson Group, and I said  
based on what we've been able to determine in  
30 paragraph 35 Mr. Best was an investigator hired  
by the defendants, Bell ExpressVu, and used  
DataCom regarding some Anton Piller orders. So

again, information which I say is not coincidental and then we find well after much of this litigation and the association between these individuals that Mr. Best finds himself as an officer, and is a sole officer of Nelson Barbados Group, which is the plaintiff as you well know, Your Honour, in this action.

So, we then come - that's the history, Your Honour, but again, I trust that my submissions have given more colour, or flavour, to why it is we say finding Mr. Best is important and I then turn to the contempt motion and what I propose to do is to go through the first series of paragraphs and exhibits until we get to my November 18<sup>th</sup> letter and then we did it all again, and I'm not going to take your time to go through the difficulties we had on the 25<sup>th</sup>, other than to state the obvious that he did not attend. So first off for the purposes of this motion, Mr. Butler's affidavit appears under Tab 2 and is sworn November 27<sup>th</sup>, and the operative order is your order dated November 2<sup>nd</sup>, which appears under Tab A and I refer Your Honour to paragraph 3. And paragraph 3 is where you ordered Mr. Best to attend on November the 17<sup>th</sup>, paragraph 3 are the questions he's to answer and paragraph 4 are the documents he was required to deliver which he did not do.

If I then jump over the next tabs deal with the UPS store that I've dealt with, Your Honour, and

5 if I turn to Tab H, this is the letter that I  
wrote following our attendance before you a  
month ago to Mr. Best, and I indicate that he's  
required to attend. You'll see in the - I  
indicate in the second full paragraph our  
attendance before Your Honour on November 2<sup>nd</sup> and  
I then state in the third paragraph that you  
ordered Mr. Best to attend on November 17<sup>th</sup>. The  
order - and this is important, the order became  
10 valid and enforceable on November 2<sup>nd</sup>, 2009. I  
make that observation because in the letter that  
we've got today Mr. Best seems to be under a  
misapprehension with respect to the legal effect  
of your order. So, I told him that and then I  
said, "You must attend the examination. You  
must also bring with you the documents." I  
enclosed a draft order and as Your Honour had  
requested I also sent him the various  
transcripts and cross-examinations. That is my  
20 letter of November the 6<sup>th</sup>. The notice of  
examination then - is attached as Exhibit I and  
just so there's no issue my assistants'  
affidavit of service appears under Exhibit J.  
What we then get, and this is in my....

25 THE COURT: Am I wrong in reading the materials,  
was there not some confusion that there was a  
reference to January 17<sup>th</sup> is the day of the  
examination? I came across that this morning.  
I wish I'd made a note. There was a typo in  
something.

30 MR. RANKING: At the second....

MR. SILVER: Mr. Best's letter apparently at the

second page.

THE COURT: He makes reference to it, but I also saw it, I thought, in your materials. That there was reference to January 17<sup>th</sup>, I think it was clearly a typographical error, but....

MR. SILVER: I'm not aware of that reference, but I am aware of this....

MR. RANKING: Which page?

MR. SILVER: In his letter at the bottom of page 2 he says "January's evidence", which I think is just a typo.

MR. RANKING: Your Honour, I'm not aware of it but if I find it I'll obviously let you know. Ms. Rubin has found it, Your Honour, and you're absolutely right, there is a - it's - my November 18<sup>th</sup> letter at Tab N. So, after the fact - if you turn to Tab N, as in Nancy...

THE COURT: Got it.

MR. RANKING: ...and I - even Mr. Best I don't think could have been mistaken from that.

THE COURT: He appeared January 17<sup>th</sup> to be examined, yeah.

MR. RANKING: Right.

THE COURT: Yeah, okay.

MR. RANKING: Right.

THE COURT: I think he also copied that letter, I think, and put it into his materials and I think that's maybe where I saw it.

MR. RANKING: Okay. All right.

THE COURT: I'm sorry, I interrupted you. Go ahead.

MR. RANKING: No, no. That's fine, and I was

5 not aware of that error. I appreciate you  
bringing it to my attention. Thankfully, and I  
say this quite genuinely, thankfully it was not  
dealing with the attendance for the 17<sup>th</sup> of  
November. Importantly I now take you to Tab K,  
because in Tab K - this is the letter we get  
from Mr. Best following his discussion with Ms.  
Traviss, and the important issue, or the  
important aspect of this letter, and the reason  
10 why I rely upon it for the purposes of  
substituted service, is this demonstrates quite  
clearly that despite the fact that Mr. Best is  
decriing the fact that he is not getting  
materials in a timely manner, he is clearly  
getting notice. And Mr. Silver simply makes the  
point that when we attended at Victory Verbatim,  
when we attended at Victory Verbatim we did not  
have this letter. So, I got this - and in my  
subsequent letter Mr. Best confirms that fact,  
but he clearly is aware when you read the first  
paragraph at the top of page 80, which is page 2  
of his letter that....

15 THE COURT: Page 2.

20 MR. RANKING: This is very relevant, in my  
respectful submission, because he says that Ms.  
Traviss read that portion that service is four  
days after the documents were served on Nelson  
Barbados when mailed to Kingston. He then says  
you then read a part to the effect that in  
30 future all service to Donald Best was valid only  
four days after the documents are mailed to  
Kingston. So, Mr. Best knows the terms of the



order and let me also make this observation with respect to his concern about the order, the draft order was sent to him to the extent there was an issue. The signed - when he was to be examined I had not sent the signed order to him and the reason for that was the delay that took to get everybody's approval as to form and content, and I in fact was intending to give him the fine order when you showed up. So, I don't want there to be any suggestion that I provided - I didn't provide him with a signed order, and I want Your Honour to know that, but the reason for that because, as I say, there was delay getting approvals to form and content and rearranging it and finally getting it done, and then I don't think - you know - so, to the extent that Mr. Best says he didn't have a copy of the order, that's not fair, I gave a draft copy of the order, as I've indicated, but he did not have a copy of the signed order. But then he says irrespective of the fact that he did not have a copy of the signed order Ms. Traviss, in the third paragraph, said, "that the judge ordered me to appear tomorrow, Tuesday, the 17<sup>th</sup>." So, there is no doubt in anyone's mind that he knew he had to attend, and then there goes on in terms of, "the judge says I am to be questioned by lawyers tomorrow, 17<sup>th</sup>, I will make myself available", and that appears at the last phrase of the fifth full paragraph. And then if you turn the page - and notably Ms. Traviss invites Mr. Best to call me, and I never

5  
10  
received a call from Mr. Best other than when I walked into the reception of Victory Verbatim. And then the last paragraph on page 81, Your Honour, "Once again I want to emphasize that I will make myself available for questioning by lawyers tomorrow, Tuesday, November 17<sup>th</sup>." Now, Mr. Best did not make himself available. We attended. Everybody in this courtroom were there. Mr. Silver - I took the call initially in reception - have you read the statement that I put on the record, Your Honour, under Tab L?  
THE COURT: Yes.

MR. RANKING: Okay.

THE COURT: The transcript.

15  
MR. RANKING: Yes.

THE COURT: Yes. I'm just wondering is this a good point to just give the staff a short break here?

20  
MR. RANKING: Absolutely. Thank you, Your Honour.

R E C E S S

25  
U P O N R E S U M I N G:

THE COURT: Yes, Mr. Ranking?

30  
MR. RANKING: Thank you, Your Honour. I'm very nearly complete. I'd just would like to thank you for your indulgence, and that we took a little longer than we expected, but I can let you know what we're doing and then finish my submissions and if either counsel have other comments, of course, but over the break I think

we have taken into consideration the concerns which you expressed concerning the form of your - the draft order that we handed up...

THE COURT: Great.

MR. RANKING: ...and I have with Mr. Silver re-drafted it and - oh, and my colleagues are phoning my secretary now to have the order re-typed, so I'm hoping to have that faxed to Ms. Traviss in the next five to ten minutes.

THE COURT: Good.

MR. RANKING: So, we can then pass up to you. I've not yet had an opportunity to review the wording with Ms. Rubin, but we've talked to her about it in theory and I think that we may be there.

THE COURT: Great. Wonderful.

MR. RANKING: So, that's just where we are on that. So, it may be that after you heard our submissions if my colleagues aren't back in courtroom I'll ask for a short recess just to get you the draft order.

THE COURT: That's fine.

MR. RANKING: So, then turning back to the contempt motion record and given the fact that you have read the transcript of what happened on the 17<sup>th</sup> of November, I'm not going to take you through it. We obtained the certificate of non-attendance, that appears under Tab O, excuse me, M, and then what I did was - we decided rather than trying to get another date before Your Honour to deal with the contempt that we would afford Mr. Best a second opportunity to attend

and my letter of November 18<sup>th</sup> appears under Tab N, and I confirmed to Mr. Best the fact that he had not attended, and I also made reference to his own letter of November 16<sup>th</sup>, at the first page, and the fact of our telephone call and that's where, just to again - where I did make the error where I referred to January 17<sup>th</sup>, not November 17<sup>th</sup>. And I think what is important from this letter, and I should say both on behalf of Mr. Silver and myself and I think I also speak for Ms. Clarke, although she wasn't actually in the eyes of Mr. Best, so I actually never spoke to her about the accusations, but it goes without saying that we categorically reject Mr. Best's version of events that day. And what is important though is we tried to set the matter down for two o'clock, he wouldn't tell us where he was, he wouldn't tell us whether he was in the jurisdiction. Mr. Silver then offered to do the examination on Wednesday or Thursday. I offered to have the examination in my office. I think it's fair to say that while we were not in agreement with respect to whether or not he'd been served with materials, we certainly tried our utmost to afford him an opportunity to either do it later that day or later that week, and Mr. Best was thoroughly non-committal on all fronts and it was at that point that we ultimately said, you know, discussing matters further with Mr. Best wouldn't help and it was quite apparent that he wanted us to read the questions. Mr. Silver started and he said,

5  
10  
15  
20  
25  
30

"Okay, that's" - and he asked where the minute book was and he said, "Okay, I have that question what's your next question?" And we made it very clear to him that we weren't going to be doing that, and I also pause to observe that Mr. Best had the written questions in his possession, because I'd served him on November 6 with the various questions that Your Honour had ordered be answered. So, it was although this would have been an exercise in futility, because he wasn't answering the questions after Mr. Silver put the question to him. He simply said, "What's the next question?"

So, what I then did was I set forth at the bottom of page 100 that he was in contempt and confirmed that his own letter - by his own letter he knew that he was to attend, and we then afforded him an opportunity to appear on November the 25<sup>th</sup>, and again, we indicated that we would be bringing a motion today for contempt if he failed to attend and that's at the top of page 3, and I then went on to tell him it was a very serious matter and I urged him to retain counsel, and I then said that either Mr. Silver or I would be prepared to speak with him, but I said, "Well, let there be no misunderstanding we expect you to appear to be examined on Wednesday, November 25<sup>th</sup> and we will move forthwith for a contempt order if you do not appear." I don't think I could have been any plainer. Now - and you will have seen that I

also invited him to attend the cross-examination of Mr. McKenzie and you will have seen from my letter that's now been deferred and - but that has not yet been re-scheduled.

Mr. Best did not attend on the 25<sup>th</sup>. On this occasion he did not call. We heard nothing from him until his letter of yesterday, which came to my office when I was in court on another matter, but apparently about four o'clock; just before leaving the motion record and dealing with the letter. We, obviously, obtained a certificate - a notice of examination is under various tabs and the certificate of non-attendance, the affidavit of Ms. Oullette - and I went through the same practice. On this occasion Ms. Rubin was not in attendance. Mr. Roman was there. Mr. Silver was there, Ms. Clarke was there, I was there, my student was there, but Ms. Rubin was not there on the second attendance and the statement that was made for the record appears under Tab R.

So, for the purposes of today's motion I think the important points to emphasize are that virtually every time before we attend before you and the dates for you are October 30<sup>th</sup>, and we got the first letter from Mr. Best November 16<sup>th</sup> when we got his second letter and December the 1<sup>st</sup>. Mr. Best clearly knows what's going on. He surprisingly knows Ms. Traviss. He's able to call her and get information, but the bottom

5  
10  
15  
line is if there were ever a case for substituted service I respectfully submit that this is it, and I respectfully submit that the appropriate course of action and the way in which we fashion the order is to require, as an order of this court, that he come back - much as we have in paragraph 3, that he comes to a hearing before you on a date to be set. What should then happen is, assuming Your Honour permits substituted service, I will then serve the order today, or tomorrow, upon Mr. Best at the address in Kingston and I'm happy to mail it to the Cloverdale Mall as well. I'm also happy to send it by email to the UPS store. I'm happy to do any and all of those things. We then will have a date for....

20  
THE COURT: I'm sorry, you mentioned Kingston, Coverdale Mall and what was the third alternative?

MR. RANKING: I was saying I was happy to email it to the Kingston UPS store. You'll recall, Your Honour...

THE COURT: Yeah.

25  
30  
MR. RANKING: ...that - I found that last night when I was looking through that they've actually got an email. So, I'm happy to do that and I'll do that - undertake to do whatever it is you want me to do, I'll do. But just dealing with the theory of how this is going to play out; what I then think ought to occur is he ought to attend on whatever date and he should then be examined in your presence by me and Mr. Silver

5  
10  
15  
20  
25  
30

and other defence if they have relevant questions that - that they wish to put that are within the bounds of your order, and if Mr. Best does not attend then the way we have fashioned the order is that we should then proceed to have the contempt motion heard. What we've done by proceeding in that fashion is the contempt motion will then have been - the service of it will have been validated, we'll then have him here, he can answer his questions. If he refuses to answer questions or we don't know what he's going to do, but one way or the other we think that the motion should proceed. If he doesn't attend, the motion should proceed in his absence and if he does attend, and we examine him, the motion may or may not proceed depending on what happens that day, but I think he should be told, in no uncertain terms, that the motion will proceed. Now, the only other observation I make is when I drafted the original order is I had asked for a warrant for his arrest to actually bring him here as opposed to a committal order, but I'm leaving all that aside. So, that's how we've now fashioned it. Okay. So, it's going to be emailed. So, subject to any comments that Mr. Silver may have, those are my submissions with respect to....

THE COURT: Thank you. Mr. Silver?

MR. SILVER: I really don't have any submissions. Obviously my client's want to get to the bottom of this and we need help of the court, because of the opposition that's being



5  
put up and I think that - I submit that the order that Mr. Ranking has submitted as we've adapted it, pursuant to your comment, gets us a step closer to getting to the bottom of it. So, I support the submissions that Mr. Ranking made and don't have anything to add.

THE COURT: Ms....

MS. CLARKE: Ms. Clarke, Your Honour.

THE COURT: Ms. Clarke, yes.

10  
MS. CLARKE: We, as well, from First Caribbean support Mr. Ranking's submissions and we too would like to get to the bottom of this. Thank you.

15  
THE COURT: Just - I'll come to you one second. One matter that arises, although I sent a letter dealing with my annoyance, I don't like counsel communicating with me during the course of hearing a motion, or about to hear a motion, I think that my reasons are obviously, but Mr. Bristol, I think in this court, last attendance as well as correspondence that I received, raised an issue has troubles me, and because it troubles me I'd sort of like an answer, and that is if the costs were, in fact, going to be paid at whatever level they're assessed and the fact that costs were paid on a previous assessment by me, is that a question that should be answered before we continue down this tortured path? I think that's the thrust of this question, and I say it troubles me and I'm not looking for a way out, believe me, I'm pretty well saddled with the idea that this is going right to the bitter

20  
25  
30

end and I'll be writing and writing some more on this matter. What are your thoughts on that? On Mr. Bristol's approach? If you get paid the costs, then what's the issue?

MR. SILVER: You want me to answer?

MR. RANKING: I can - sure, you go ahead.

MR. SILVER: I think that's a - I think it is a good question, but with the greatest of respect I think you're asking the wrong side the question, and if - if the respondents, whether it be Nelson Barbados - any, or all of them, came to the court and said, "We can make these issues moot by posting the money in court."

THE COURT: That's exactly the method I was thinking about.

MR. SILVER: Subject....

THE COURT: To the assessment.

MR. SILVER: Subject to the assessment, but these defendants would know that they're going to get their costs. If they get a cost award you may then conclude that it's not relevant to know. We may still have argument about that, but I would think that that would be something that has to be initiated on the other side and real security, like, security that we know that if there's a cost award and the appeal period runs, our clients get paid. That's how I see it.

THE COURT: Sorry.

MR. RANKING: Sorry. Subject to one other matter, which is a very real issue. The whole issue of this case being started in Ontario

5  
10  
15  
20  
25  
30

through a sham corporation is as much alive today as it will be tomorrow when a different jurisdiction is chosen, another action is commenced, and I can tell you that there have been rumblings about actions being commenced in Florida. So, I am more than happy to settle this case today if my client were paid the caveat that I would insist upon, is that anybody related to - whether it's John Knox or Marjorie Knox, or whoever is behind all of this, provides a full and final general release that my client, and I'm sure I speak for all the defendant's, will not be sued anywhere else, because that is a legitimate concern.

THE COURT: Haven't they - I'm sorry, but I'm trying to go back - I'm trying to recall what I wrote, and didn't I review the Barbadian actions that are already underway?

MR. RANKING: Yes.

THE COURT: And they are companion actions already in existence down there.

MR. RANKING: I can tell Your Honour and - that my client has received letter from a Florida firm demanding production of financial statements and we said, "We're not going to produce them to you, you're acting for Marjorie Knox." But then - and there have been certainly suggestions of taking steps further. So, I take no issue with respect to what's happening in Barbados, but there are other law firms that have been engaged that are writing letters that give us concern, so I'm not in any way trying to

5  
dodge your question, I'm happy to get this  
matter resolved by posting a bond and dealing  
with it, but I have to be very candid that one  
of the conditions I would insist upon is that my  
client, and I'm sure, as I say, I speak for  
everyone knows this is it, and that we're - the  
litigation is over everywhere.

MS. RUBIN: Your Honour....

10  
THE COURT: You can understand why I left you  
for last.

MS. RUBIN: Yes. Let me start with that  
question, because it puts - of course we're in a  
very difficult position here. I don't act for  
Nelson Barbados.

15  
THE COURT: Well, I understand.

20  
MS. RUBIN: I don't act for Don Best, and that's  
- we've made that clear from the outset. We act  
only for Bill McKenzie and his firm and in  
respect of Your Honour's question about the  
possibility of the company, the plaintiff,  
posting amounts for costs and Mr. Ranking's  
submission that he would only accept that option  
if there were released. I'll say two things;  
25  
firstly, it would serve my client very well if  
the company, the plaintiff, would post security  
for costs or would pay the costs now if there  
was an amount set. Of course that would take a  
lot of the risk away from my client and I  
30  
believe there would be nothing that would please  
him more. However, I don't - I can't - I don't  
come from a place where I'm able to make any  
sort of submissions or take any position with

5  
respect to that, because it's my client's former client, I have no knowledge of its capacity to do that, or its ability to do that, but should Your Honour choose after argument to make some kind of order that would give it the option to do that, I would take no position.

10  
THE COURT: Well, the reason I raised it is it can't come as a surprise to your firm, because Mr. Bristol, I think, copied everyone with that letter. He sent that message out and he sent me a letter which was copied to all the counsel and I just - and he followed up with a phone call saying, "Did Justice Shaughnessy read my letter?" And I - sort of annoyed by it, I read all the letters, but because I don't respond one should not - one should take from that that I won't be responding, but I guess what I'm saying it was an interesting - it was an interesting comment, and your firm is certainly aware of it and I'm not deciding anything, I'm just sort of looking at it and I really thought, yes, from your perspective it would make life a whole lot easier.

15  
20  
25  
30  
MS. RUBIN: From our perspective it would be the best possible outcome, I think, to - for everybody, but as I said it - Mr. Ranking's submissions and that suggestion, and the suggestion that my firm has knowledge of it, therefore it should happen, presupposes that - that we somehow have a connection or act for, or are acting in the interest of the company and Mr. Best, and that's absolutely not true and

5  
unfortunately - perhaps it would good to  
communicate that option to Mr. Best, but as I  
said, because there is such a delicate situation  
here between my principle and his former client  
I can't really take a position on...

THE COURT: No, I...

MS. RUBIN: ...that.

10  
THE COURT: ...didn't expect you - I think what  
I'm really trying to do is I'm just planting a  
seed, and I'm sure that either Mr. Silver or Mr.  
Ranking will get back to Mr. Bristol and tell  
him that I heard the message, but frankly, it's  
not anything that I can control, it's not my  
hands. It might be a good idea that this  
15  
message was conveyed to Mr. Best if he didn't  
receive a copy of Mr. Bristol's letter, he might  
be copied with that letter and who knows what  
will happen thereafter. I'm also saying to you  
that - I don't want to appear aloof, but I do  
want to stand distant from this, because there  
are serious allegations that deal with the  
administration of justice, which is a whole  
other component here that require me to remain  
neutral and as uninvolved in any discussions  
20  
that may take place with Mr. Best, or any other  
parties for that matter. In any event, enough  
of that.

25  
MS. RUBIN: I think I should advise Your Honour  
while we're on the subject, I believe my friends  
30  
will tell me if I'm wrong, but Shawn  
orchestrated this part of it. Mr. Bristol's  
client has settled - like, I believe that

5  
10  
15  
20  
25  
30

matters have been settled with Mr. Bristol's client, so I don't believe he will be appearing again on this motion.

MR. SILVER: I never heard that.

MS. RUBIN: I had thought....

MR. SILVER: And I wonder whether you're confusing Mr. Bristol with Mr. Conklin...

MS. RUBIN: Oh.

MR. SILVER: ...who Mr. Duart had indicated in the letter he might have struck a deal, although that hasn't...

MS. RUBIN: Your Honour...

MR. SILVER: ...been confirmed.

MS. RUBIN: ...I'll confirm if there is a settlement with one of....

MR. SILVER: I think it might be Mr. Conklin...

MS. RUBIN: Okay.

MR. SILVER: ...but....

MS. RUBIN: In any event, I take Your Honour's point. On the issue of a release, again, the parties who Mr. Ranking seeks a release from are not - I mean, there was never a disposition on the merits of the action. I don't think we can ask for that.

MR. SILVER: Okay.

MS. RUBIN: As officers of the court, I'm not speaking for any party here, it's a very unusual....

THE COURT: No, no. I think if you get it, take it for what it's worth, I drifted something out there and I'm going to leave it and I don't expect you to respond any further on that

matter.

MS. RUBIN: All right, and just then to respond quickly to the motion today, again, I don't act for Mr. Best. I'm not here to make submissions on his behalf or on behalf of the plaintiff, but as counsel for Mr. McKenzie we are involved in the action and my submissions should be taken as submissions on behalf of an officer of the court, and my only - my concern, first of all, with the first draft order was slightly the same as Your Honour's concern and that is that Mr. Best should be afforded the procedural protections and the rules, and be provided with adequate notice of a motion which seeks to curtail his liberty, the most serious motion in the rules - under the rules, and I believe it sounds as if my friends have drafted the order in a form that seems to provide that protection. Again my only concern would be that if Mr. Best does not receive the materials with sufficient time to - if he decides to retain and instruct counsel then as officers of the court I think we would be failing in our - in all of our duties to ensure that the contempt motion proceeds in a proper fashion, and so, my only submission on that issue is that he be afforded an adequate time, and I take no position on the merits of the - the substance of the order, only that he be afforded the time that he requires should he decides to retain and instruct counsel to appear for him either on any cross-examination for Your Honour, or on a contempt motion. And so - for



example, if he is, in fact, out of the country as he says, that he have sufficient time to arrange his affairs so that he can appear on the date set by the court, or that he has the flexibility to contact counsel to arrange an alternative date if he's not available on that date if he decides to appear, and if the contempt motion is to go ahead on the date that the court have set for the cross-examination viva voce before Your Honour. So, I just - more as an observation and I put it out there to Your Honour that there should be some - in my submission, flexibility built in if Mr. Best, on the serious matter, where - there is a possibility that he could be arrested and imprisoned seeks to finally, hopefully, seek counsel and retain counsel to act for him. That's my position on the order. As far as the submissions of my friend, there were several submissions that did involve Mr. McKenzie, I was tempted to answer them today, but I think I'm going to save those submissions for the actual cost motion, should it proceed. There were several issues that my friend went into which, in my submission, went beyond what the evidence that was required in support of the motion against Mr. Best today, but I'm going to sit down and save my submissions for the hearing on costs.

THE COURT: Keep your powder dry.

MS. RUBIN: That's right. Thank you, Your Honour.

THE COURT: All right.

MR. RANKING: We have a draft order

THE COURT: Can I look at that, please? Madam Registrar, would you - destroy that one so we don't mix them up.

MADAM REGISTRAR: Yes.

THE COURT: You have a copy, Ms. Rubin?

MR. RANKING: We only - Ms. Traviss only brought us one copy. That's the only copy we have in the court.

THE COURT: Well, I'm going to let you look at it before I do anything. I guess we need Jackie Traviss on the line in any event. What kind of time are we talking about for the return at paragraph 3?

MR. RANKING: We were thinking the week of December the 14<sup>th</sup>, Your Honour.

THE COURT: That's pretty short notice though, isn't it?

MR. RANKING: Well, we can - the problem is that we've got - we can go into January, I mean, I don't think it's being realistic to do it the week before Christmas, which is the only reason....

THE COURT: I don't either, I won't be here.

MR. RANKING: Yeah. So, then it would be January. We were hoping that we could do it before Christmas, that was all.

MR. SILVER: The concern is the February 22<sup>nd</sup> return date on the costs submissions, and as weeks slip by we - I predict we come closer to not being able to conclude the matter on

February 22<sup>nd</sup>, and so, and of course I don't know your availability at all, but I was hoping that, you know, two weeks from today, for example, is December 16<sup>th</sup>, which would get it done and I know you know this, but Mr. McKenzie's cross-examination has been postponed on two occasions because everybody agrees that it makes sense to conduct that after Mr. Best. And so, there are other steps that are required to be taken after - if and when Mr. Best shows up, and so, the earlier we do those the more time we have to do the other steps without having to change the February 22<sup>nd</sup> date. So, that's the only rush. And yet, we're still - I'm proposing two weeks notice, which is certainly more than enough under the terms of the substituted service, and quite franking and, you know, I think it's reasonable to conclude that if he's going to attend it won't matter to him whether it's before Christmas or after, and more importantly if he's not going to attend it won't matter if it's before Christmas or after. That's why I'm pushing for an earlier than later date.

MS. RUBIN: Your Honour, again, the only thing I would say is I believe the process should be fair to Mr. Best. I believe that Mr. Best should have ample notice, assuming he's not in the country, as he says he's not, that he have ample notice to return to arrange his affairs, to retain counsel. In my submission this motion was to be heard in November and Mr. Duarte asked me to make it clear today, as he repeated so

5 many times when he was here, it was not to be moved, it was not to be adjourned, it was to go ahead and there is nothing urgent about this matter, it's a matter for costs, and we would all have liked it to be heard in November and we would all like it to be heard in February, but if a man is to be arrested and imprisoned possibly following a motion on December 15<sup>th</sup>, which would have him sitting in prison over - possibly over Christmas, I believe that we should all step back and look at this with some perspective and provide him with the time that he needs, or requires, or at least to know that we've done it properly so that he has the opportunity to do what he wants to do to defend whatever proceedings are brought against him. Those are my submissions.

10 THE COURT: Is Jackie Traviss there, or no?

15 COURTROOM REGISTRAR: She is, Your Honour. I just have her on the line.

20 ...SCHEDULE DISCUSSED BETWEEN COURTROOM REGISTRAR, JACKIE TRAVISS (ON PHONE) AND CONVEYED TO JUDGE.

25 COURTROOM REGISTRAR: Friday of the second week would be better.

THE COURT: That would be the 15<sup>th</sup>?

MR. RANKING: The 15<sup>th</sup>.

30 THE COURT: Counsel?

MR. RANKING: That's fine.

MR. SILVER: Clear in my diary.

THE COURT: All right. Would you mark that in? That'll be a nine-thirty start, January 15<sup>th</sup>.

COURTROOM REGISTRAR: Okay. Thank you.

...CALL WITH JACKIE TRAVISS TERMINATED.

THE COURT: Do you want to have a look at this order - what about the cost provision in paragraph 5? We had no submissions on that.

MR. RANKING: Well, I didn't - I hadn't been so presumptuous as to make submissions on costs. Look, I'm happy to put costs over again. I'll be very candid; the reason that I wanted the cost order today is that if he then doesn't pay the cost and he then fails to appear, it's another bow in my quiver, but....

THE COURT: Well, let's put it over to the date.

MR. RANKING: I'm happy to do that. Happy to do that, Your Honour.

THE COURT: Why don't you look at this, Ms. Rubin.

MS. RUBIN: All right, Your Honour. Just in paragraph 3....

THE COURT: Yup, I haven't put that in yet.

MS. RUBIN: And the only other issue that I can think of is if there are going to be supplementary materials served on Mr. Best that they be filed with - not on short notice, and....

THE COURT: Oh, I think the materials are ready to fire here. I think we've got the materials that are necessary to proceed. I don't think I

have to add anything in that regard.

THE COURT: Have you had a chance to see this, I'm sorry. You have seen this?

MS. RUBIN: Yes, Your Honour. It's fine.

...JUDGE GETS CONFIRMATION OF THE COURT ADDRESS FROM THE REGISTRAR.

...JUDGE WRITES ENDORSEMENT.

THE COURT: I've made the following endorsement, back of the motion record, "In the usual course a motion to hold a person in contempt should be served personally. However the circumstances of the present case are most unusual. Mr. Donald Best, the present director and shareholder of the plaintiff corporation, has set up a somewhat elaborate procedure for mailings and other communications. He has a UPS post box address in Kingston which in turn forwards all correspondence to yet another UPS post box at the Cloverdale Mall in Toronto. Further, it is apparent from correspondence sent by Mr. Best, including conversations he states he had with the trial coordinator at Whitby that Mr. Best is aware of all aspects of these proceedings including my order of November 2<sup>nd</sup>, 2009. Mr. Best called the Verbatim office on the day of the scheduled examinations and attempted to conduct the examinations over the telephone. Mr. Best has sent material to the trial coordinator, and me, which is not in affidavit form. Mr. Best refuses to provide any address

where he resides, but suggests he is out of the country. Extensive investigations have not resulted in a location where he resides. I find that Donald Best is deliberately avoiding personal service of the contempt motion. There are no other steps that can be taken by the defendants to locate Mr. Best. In these unusual and unique circumstances I find that an order for substitutional service of the contempt application is appropriate, and it is so granted. Mr. Donald Best will be substitutionally served with the motion for contempt and this, my endorsement, at Number 1) the UPS address in Kingston, Ontario as detailed in the order of Eberhard, J., and 2) at the UPS address at the Cloverdale Mall in Toronto. The contempt motion is now set to be heard by me on January 15<sup>th</sup>, 2010 at nine-thirty at Whitby, Ontario. Costs of today's attendance and costs thrown away are reserved to the January 15<sup>th</sup>, 2010 date. The cross-examination of Mr. McKenzie has been delayed pending this aspect of the proceeding. Further three days for the hearing of costs have been reserved for the end of February 2010. It is therefore necessary that all dates and timelines be adhered to in order that this matter can be completed in both a fair and expeditious manner." Anything else? Order signed. The only changes that I made to the order - well, you'll see them. I added to paragraph 3, "This court further orders that Donald Best shall appear before the Honourable

Justice Shaughnessy to give evidence at a hearing in Whitby on January 15<sup>th</sup>, 2010 at 9:30 a.m. at the courthouse, 601 Rossland Road East, Whitby, Ontario", I added. I put in a date under paragraph 4 of January 15<sup>th</sup>, 2010 and I changed paragraph 5 to say, "The court further orders the cost of this motion are reserved to the hearing of January 15<sup>th</sup>, 2010." All right.

MR. RANKING: Thank you, Your Honour.

MR. SILVER: Thank you.

MS. RUBIN: Thank you.

THE COURT: Oh right, and I just wanted you - before you duck out of here, I know it's late, but to take a look at the boxes that I've now told the CSO that I want to ship, but I want you to take a look at them before they go back to Barrie, because they go back there you never know what's going to happen.

MR. RANKING: To be fair to Ms. Rubin it may be that what - we'll do that now, but it may also be that Ms. Rubin doesn't know what Mister - so we may have to come back again before - just to double check it, but we're going to do it now, but I just - in fairness to Ms. Rubin.

THE COURT: All right. I guess that what I should do just for the purposes of the record, I'm going to file the - what Mr. Best sent to the trial coordinator, Jackie Traviss, really twice, but I guess one was meant for me, because it's addressed to me, and one to Jackie Traviss, as I say one got assembled, they didn't assemble the second set of materials. I'm just going to



Nelson Barbados Group Limited v. Richard Ivan Cox, et al.  
Certification

simply put them in the court file to remain  
there. Here's the other one.

M A T T E R      A D J O U R N E D

FORM 2

Certificate of Transcript  
Evidence Act, subsection 5 (2)

I, Brenda Wakelin, certify that this document is a true and  
accurate transcript in the recording of Nelson Barbados Group  
Limited and Richard Ivan Cox, et al., in the Superior Court of  
Justice, held at 601 Rossland Road, Whitby, Ontario taken from  
Recording No. 2812-3-0216/2009 and No. 2812-3-0217/2009, which  
has been certified in the Form 1 by L. Buchanan.

(Date)

May 9, 2012

(Signature of authorized person(s))

Brenda Wakelin, B.Sc., B.Ed., OCT, CCR, ICDR  
Certified Court Reporter, CRAO  
Internationally Certified Digital Reporter, IAPRT

**PLEASE NOTE:**

It is against Regulation 587/91, Courts of Justice Act,  
January 1, 1990, to reproduce this transcript in any form  
and/or format. This transcript is a certified true copy and  
bears the original signature in BLUE INK. This is not a valid  
transcript unless it bears the original signature.

Please contact the Courts Administration Office to obtain  
further copies from the reporter listed above at 905 743 2672.

Thank you.





