

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES, a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, 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., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED, 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, and JOHN DOES 1 – 25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN & ASSOCIATES LTD, GBI GOLF (BARBADOS) INC., 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, PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD. AND COMMONWEALTH CONSTRUCTION INC.

Defendants

**AFFIDAVIT OF JESSICA ZAGAR  
(sworn June 7, 2010)**

I, Jessica Zagar, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:.



1. I am an associate at Cassels Brock & Blackwell LLP, solicitors for the defendants Richard Ivan Cox, Gerard Cox, Alan Cox, Kingsland Estates Limited, Classic Investments Limited, Gittens Clyde Turney, R.G. Mandeville & Co., Keble Worrell Ltd., Lionel Nurse, Owen Seymour Arthur M.P., Mark Cummins, The Barbados Agricultural Credit Trust, The Attorney General Of Barbados, The Country Of Barbados, Elneth Kentish, Malcolm Deane, Eric Ashby Bentham Deane, Owen Basil Keith Deane, Estate Of Vivian Gordon Lee Deane, David Thompson, Owen Gordon Finlay Deane, Life Of Barbados Holdings, Life Of Barbados Limited And Leonard Nurse. I am assisting with this case and as such, I have knowledge of the matters hereinafter deposed, unless I state that that my information is based on the information of others. In such case, I verily believe that information to be true.
2. On May 3, 4 and 5, 2010, the continued cross examination of William K. McKenzie ("**McKenzie**") was conducted on his affidavits, sworn October 2, 2009 and April 23, 2010.
3. On May 5, 2010, during the continued cross examination of McKenzie, Lorne Silver ("**Silver**"), a partner at my office with carriage of this matter, requested on the record of Crawford McLean Anderson Duncan LLP's ("**CMAD**") counsel, Ian Epstein ("**Epstein**"), that counsel for the defendants be permitted to attend at CMAD's office to review boxes or files relating to BMC 543 and BMC 568 or otherwise relevant to the subject matter of the dispute (the "**Files**").
4. On May 6, 2010, Silver contacted Epstein to make arrangements to inspect the Files. On May 7, 2010, Epstein confirmed that counsel for the defendants could attend CMAD's office to inspect the Files. Attached hereto and marked as **Exhibit "A"** is a true copy of an email chain, dated May 6 to 7, 2010, containing Silver and Epstein's correspondence.
5. On Thursday, May 13, 2010, Silver, Emmeline Morse ("**Morse**"), an associate at Fasken DuMoulin Martineau LLP and Adria Leung ("**Leung**"), an articling student at Miller Thomson LLP, attended CMAD's Orillia office to inspect the physical Files. I am advised by Silver that Silver, Morse and Leung identified the documents



requested to be photocopied and delivered (the "**Documents**"). Attached hereto and marked as **Exhibit "B"** is an email, from Christine Barbison on behalf of Lorne Silver, to Ian Epstein and Cecilia Hoover, counsel for CMAD, listing those Documents identified for photocopying and delivery.

6. I am advised by Silver and verily believe that McKenzie had located two additional boxes of documents pertaining to the matter. These documents were available for inspection at the firm of Kramer Henderson Sidlofsky LLP ("Kramer Henderson").

7. On May 25, 2010, Silver and Morse attended Kramer Henderson to review the two additional boxes of documents and to identify the documents requested to be photocopied and delivered. Cecilia Hoover, Epstein's colleague ("**Hoover**") and an associate from Paliare Roland Rosenberg Rothstein LLP were also in attendance.

8. On Friday, May 28, 2010, Kramer Henderson delivered the documents identified for photocopying and delivery to our office. I confirm that the documents provided by Kramer Henderson were copied to a disc and that disc contains an accurate copy of the precise documents provide by Kramer Henderson on May 28, 2010. Attached hereto and marked as **Exhibit "C"** is a disc containing copies of the documents delivered by Kramer Henderson on May 28, 2010.

9. On Friday, June 4, 2010, a summer student from my office, Andrea Buncic, attended Staples in Orillia, Ontario, to retrieve seven discs containing the Files identified on the inspection of documents of May 13, 2010 aforesaid. Attached hereto and marked as **Exhibit "D"** are seven dvds containing the Documents.

10. I swear this affidavit for no improper purpose.

SWORN BEFORE ME at the City  
of Toronto, in the Province of  
Ontario, on June 7, 2010.

[Redacted Signature]

Commissioner for Taking Affidavits

[Redacted Signature]

Jessica Zagar

**Sean Andrew Williamson, S.C.** Commissioner, etc.,  
Province of Ontario,  
while a Student-at-Law  
Expiry: \_\_\_\_\_



This is Exhibit "A" referred to in the  
affidavit of Jessica Zagar  
sworn before me, this

June 2010  
[Redacted Signature Block]

Sean Andrew Williamson, a Commissioner, etc.,  
Province of Ontario,  
while a Student-at-Law.  
Expires March 22, 2013.

**From:** Ian S. Epstein [mailto:iepstein@blaney.com]  
**Sent:** Friday, May 07, 2010 4:04 PM  
**To:** Silver, Lorne  
**Cc:** Todne Bryan; PAUL.SCHABAS@blakes.com; RYDER.GILLILAND@blakes.com; alang@stikeman.com;  
Andrew Roman; Maanit Zemel; Ranking\_Gerald; Zagar, Jessica; Morse\_Emmeline; jwkramer;  
bristow@gsnh.com; landerson@kramerhenderson.com; jwkramer@kramerhenderson.com; Cecilia Hoover  
**Subject:** RE: Nelson Barbados Group Ltd.

Hi Lorne, you can attend in Orillia to inspect the files next Thursday (between 11am and 5pm). There will be someone in the room with you (probably Stacey Ball) while you review the documents. If you want copies of any documents, you should flag these and copies will be provided to you at your expense. Mr. McKenzie has also requested an opportunity to review the files and this will likely take place on Wednesday. If this happens, I am advised that he will bring up the 2 boxes of files that he had in his garage to Orillia, from which he will remove any privileged documents and you will have an opportunity to review these documents as well. If, for any reason he does not come up on Wednesday, you will need to make separate arrangements with Mr. McKenzie's counsel to inspect his files. Please confirm that you will be attending at the firm on Thursday at 11am and I will ensure that the files are made available to you at that time.

Ian

**From:** Silver, Lorne [mailto:lsilver@CasselsBrock.com]  
**Sent:** May 06, 2010 4:46 PM  
**To:** Ian S. Epstein; Cecilia Hoover  
**Cc:** Todne Bryan; PAUL.SCHABAS@blakes.com; RYDER.GILLILAND@blakes.com; alang@stikeman.com;  
Andrew Roman; Maanit Zemel; granking@fasken.com; Zagar, Jessica; emorse@fasken.com; jwkramer;  
bristow@gsnh.com; landerson@kramerhenderson.com; jwkramer@kramerhenderson.com  
**Subject:** RE: Nelson Barbados Group Ltd.

Ian;

May I please hear from you as to arrangements to inspect the files next week up in Orillia. Next Thursday (or Wednesday but Thursday is better) would work for me. I look forward to hearing from you. Thanks

**From:** Todne Bryan [mailto:tbryan@millerthomson.com]  
**Sent:** Thursday, May 06, 2010 4:41 PM  
**To:** iepstein@blaney.com; CHoover@blaney.com; Silver, Lorne; PAUL.SCHABAS@blakes.com;  
RYDER.GILLILAND@blakes.com; alang@stikeman.com; Andrew Roman; Maanit Zemel;  
granking@fasken.com; Zagar, Jessica; emorse@fasken.com; jwkramer; bristow@gsnh.com;

landerson@kramerhenderson.com  
Subject: Nelson Barbados Group Ltd.

Please see the attachment below. Thank you.

**Todne Bryan**

Legal Assistant Floater to Maanit Zemel  
Miller Thomson LLP  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, Ontario M5H 3S1  
Direct Line: 416.596.2117  
Fax: 416.595.8695  
Email: [tbryan@millerthomson.com](mailto:tbryan@millerthomson.com)  
[www.millerthomson.com](http://www.millerthomson.com)



**MILLER  
THOMSON** LLP  
Barristers & Solicitors  
Patent & Trade-Mark Agents

\*\*\*\*\*  
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Sean Andrew Williamson, a Commissioner, etc.,  
Province of Ontario,  
while a Student-at-Law.  
Expires March 22, 2013.

6/3/2010

content of boxes 1 - 10.

Boxes 11 - 15 - correspondence in bmc 568 - 586, arranged in brads in reverse chronological order. Cassels and Faskens have requested that the entirety of these five boxes be photocopied, with the view that virtually all of the communications therein contained are relevant. Certainly, a great number of the undertakings relating to Mr. McKenzie's email communications with Best, DA, JG, JK, KD, Mike Dribin, John Kelly, etc. would be fulfilled. Please note that whilst in Orillia yesterday, Stacey Ball made inquiries of the local Staples as to copying and scanning charges and while we await final confirmation of the estimated price, we wish that the photocopying and scanning process commence immediately. In this way, as Staples had indicated that they require a five business day turnaround, we could expect to receive the photocopies early in the week commencing May 24th, just two weeks before the June 7th hearing recommencement date. It is thus imperative that arrangements be finalized immediately and delivery of the documents to Staples completed today.

Boxes 16, 17 & 18 - no copies requested.

Boxes 19 & 20 - various sub files requested, as well as various documents within the sub files.

Boxes 21 & 22 - no copies requested.

bmc 543 - 6 boxes

Box 1 - a few sub files and various documents within sub files are requested.

Box 2 - copy of envelope and contents re trust, will and power of attorney, "Lenny St. Hill" file, "PWC and cost issues" sub file, "package re PWC" and "Peter security and personal" sub file are requested.

Box 3 - sub files requested included "bmc 543 - Kingsland - trust litigation", "bmc 543 - Florida attorney and agents" and miscellaneous documents within "security issue" sub file.

Box 4 - miscellaneous documentation from monthly accounting sub files and "Inn Chambers" sub file.

Boxes 5 & 6 - correspondence files within bmc 543, the full content of which was requested.

We are thus requesting that the full contents of seven boxes of correspondence files be copied and scanned immediately, as well as the other documentation referenced above. Please confirm that the photocopying requested yesterday and as confirmed herein will take place immediately.

Please also confirm that all steps will be taken to preserve these original physical files in their current state. Indeed, it may be that we require some of the original files to be brought to court when the hearing recommences before Justice Shaughnessy on June 7th.

I look forward to hearing from you at your earliest convenience.

Lorne S. Silver  
Cassels Brock & Blackwell LLP  
Barristers and Solicitors  
Scotia Plaza, 21st floor

6/3/2010



40 King Street West  
Toronto, ON M5H 3C2

Direct Telephone: (416) 869-5490  
Direct Fax No.: (416) 640-3018  
Email Address: lsilver@casselsbrock.com

THIS IS EXHIBIT "C" REFERRED  
TO IN THE AFFIDAVIT OF  
JESSICA ZAGAR, SWORN  
BEFORE ME THIS 7 DAY OF  
JUNE, 2010



Sean Andrew Williamson, a Commissioner, etc.,  
Province of Ontario,  
while a Student-at-Law.  
Expires March 22, 2013.