
The Nelson Barbados Group Ltd Affair Goes To Court In BARBADOS~The Other Side Of The Kingsland Estate Court Matter Part XIV

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Submitted by BWWR



Court File No.: 07-0141

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 LAIN 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)

FACTUM OF THE MOVING DEFENDANTS

OVERVIEW OF THE MOTION

1. These submissions are made by certain of the defendants, as set out on Schedule A-1 to A-8 and Philip Vernon Nicholls and Cottle, Catford & Co. (represented by David Bristow) (.The Moving Defendants.), in the context of motions brought by the defendants for an order pursuant to s. 106 of the Courts of Justice Act and Rules 21.03(1) and 17.06 of the Rules of Civil Procedure staying the action on the grounds that the Ontario Court does not have jurisdiction over the action or, in the alternative, that Ontario is not the convenient forum for the action.

2. The action is advanced by Nelson Barbados Group Ltd (.Nelson Barbados.), an Ontario corporation which was incorporated shortly before this action was commenced, and whose registered address is the same as its solicitor in this proceeding. Virtually nothing is known of this corporation other than a vague assertion in the Amended Statement of Claim, that it has an interest in shares in Kingsland Estates Limited (.Kingsland.), a Barbados corporation, the majority of which was acquired in 2005 (pursuant to an offer to purchase made in 1997), by certain of the Barbados defendants. The Plaintiff's counsel, and its affiant, have refused to provide any additional information regarding Nelson Barbados.

3. The action therefore relates to Kingsland and property it owned or owns in

Barbados. Almost all of the 63 named defendants in the action are located in Barbados. There is little explanation for the inclusion of a handful of Ontario defendants, other than a generalized conspiracy allegation against all of the defendants. As the evidence adduced on the motion discloses, the plaintiff had no basis for pleading such a conspiracy which, it is submitted, was only alleged in order to be able to assert the most tenuous of links between the action and Ontario.

4. This action is a transparent attempt at forum shopping, in an effort to re-litigate issues that have already been litigated in Barbados, including, in one case, an appeal to the Privy Council. Many other proceedings relating to Kingsland and involving several of the Barbados defendants are the subject of ongoing litigation in Barbados. These relate to matters involving the acquisition of shares in Kingsland by the defendant Classic Investments Limited (.Classic.) (another Barbados corporation) in 2005, and the disposition of property (in Barbados) owned by Kingsland subsequent to that date. The same issues are raised in this action.

5. The Moving Defendants submit that there is no real and substantial connection between the action and Ontario. Although reference is made, in the Amended Statement of Claim, to an attempted acquisition of Kingsland in the early 1990s which acquisition tangentially involved some Ontario defendants (and certain of the Barbados defendants), the plaintiff has, without foundation, baldly pleaded that those involved in that failed acquisition, are somehow linked to, or conspired with, those who acquired shares in Kingsland in 2005, to deprive interests now, supposedly, represented by the plaintiff (although all questions regarding how the plaintiff came to have an interest in Kingsland were refused). The plaintiff has failed to put forward any evidence to justify any link between the failed acquisition and the subsequent 2005 transaction in respect of Kingsland, or any connection between the asserted conspiracy and Ontario. Respectfully, The Moving Defendants submit that the naming of the Ontario and Barbados defendants involved in the earlier failed acquisition, is

unfounded, improper, and was done without any factual foundation and for the sole purpose of alleging some connection to Ontario.

6. The causes of action related to and following from the acquisition of shares in Kingsland in 2005, and the transaction itself, have absolutely no connection to Ontario and, in any event, are the subject of much litigation . concluded or continuing . in Barbados.

7. Further, even if this Court found that it has jurisdiction over the action, Ontario is clearly not the most convenient forum. The subject matter relates exclusively to events that took place in Barbados (which applies both to the irrelevant events of 1990-1994, and to the 2005 transaction and following), virtually all the parties reside in Barbados, and the evidence at trial will emanate from there. There have been, and continue to be, actions in Barbados involving the same facts. Any agreements in issue in this proceeding are governed by Barbados law and stipulate Barbados as choice of jurisdiction, and it is clear that Barbados law applies to this case in any event. Barbados is not just more convenient than Ontario, it is the only convenient forum for this litigation.

8. In addition, in an effort to have this Honourable Court take jurisdiction where it otherwise has no basis to do so, the plaintiff has made allegations suggesting that the Barbados justice system is inadequate or, indeed, corrupt. These scandalous allegations are unsupported by any proper evidence. John Knox, the Plaintiff's affiant, and the Plaintiff's solicitor, apparently did no investigation prior to making assertions as to bias and impropriety. All of the allegations have been clearly rebutted by the current Chief Justice, Sir David Simmons, who was named as a defendant, arising from his role as a solicitor in incorporating and acting for a company between 1990 and, at latest, 1994, on a failed bid to acquire Kingsland shares. John Knox has also now confirmed the uncontradicted evidence of the Chief Justice that facilities in Barbados are not

in any way inadequate. The construction of a state-of-the-art, modern courthouse, is about to be completed in Bridgetown, Barbados, making any suggestion as to lack of facilities (assuming it had any merit) unfounded.

9. The Moving Defendants further submit that the entire conduct of this proceeding to-date, including the allegations in the pleadings, the motions for directions and the conduct of Plaintiff's counsel in filing evidence on this motion and at the cross-examinations, has been without foundation and improper. The Moving Defendants will be urging this Honourable Court to take all of the conduct of the action by the Plaintiff and its counsel into consideration in its consideration of costs regardless of the outcome of this motion.

10. In sum, for the reasons set out above, and those described in more detail below, the Moving Defendants submit that this Honourable Court ought to find that it has no jurisdiction, or in the alternative ought to decline jurisdiction; this action is a blatant and improper exercise in forum shopping which should not be permitted by this Court.

FACTS

A. The Parties

(a) The Defendants

11. The Amended Statement of Claim is addressed to 58 different defendants, although 63 defendants are listed in the title of proceedings. Of those 58 addressees, five are located in Ontario: Brian Turner, Thornbrook International Consultants Inc., Thornbrook International Inc., Phoenix Artists Management Limited, and G.S. Brown and Associates Ltd. (which is also listed as G.S. Brown Associates Limited with a Barbados address) (collectively, the "Ontario Defendants").

12. With two exceptions (Veco Corporation, of Anchorage Alaska, and Commonwealth Construction Ltd., of Burnaby, British Columbia), all the other defendants are identified by addresses in Barbados.

Amended Statement of Claim, Bannister Motion Record, Tab 2A

13. Attached as schedules A-1 to A-8 to this factum are specific details regarding each of The Moving Defendants (other than Philip Vernon Nicholls and Cottle, Catford & Co.) and their lack of connection to Ontario.

(b) The Plaintiff

14. The plaintiff is an Ontario corporation, with its registered office at the solicitors for the Plaintiff's office in Orillia, Ontario. The plaintiff has tendered no evidence as to the location of shareholders, directors, officers or the assets (if any) of the plaintiff. The Corporation Profile Report lists a .Donald Best. as President. The affiant for the plaintiff on the motion, John Knox of Barbados (whose first visit to Toronto was to be cross-examined in this matter), would not, on the instruction of counsel for the plaintiff, answer questions as to the identification of shareholders, officers, directors, assets, business activity other than this litigation, or any other information regarding the plaintiff, including information about Donald Best, which demonstrate any connections to Ontario, or to refute that the Plaintiff was only incorporated in Ontario to assist with the obvious attack on jurisdiction which is now before the Court.

Corporation Profile Report, Bannister Motion Record, Tab 2B

Cross-examination of John Knox, pp. 39-61

15. Further, the Amended Statement of Claim says nothing about the Plaintiff's interest in Kingsland other than an assertion that it .has security over

and ownership rights in common shares of the Defendant Kingsland. which, it is pleaded, includes the right to share in the increase in the value of those common shares as well as dividends or other payouts to shareholders by Kingsland.

Amended Statement of Claim, Bannister Motion Record, Tab 2A, paras. 2 and 46

16. In his affidavit, Knox vaguely asserts that the plaintiff has an interest in shares of Kingsland previously owned by Knox's mother, Marjorie Knox (also a named defendant resident in Barbados), which shares have been transferred to a trust. The actual shares of Kingsland, he says, are physically located in Canada. None of the trust documents have been produced, although Knox is a beneficiary, his sister in Miami is the trustee, and the trust documents are lodged with a U.S. attorney in Miami. No information as to where in Canada (Ontario or somewhere else) the shares are located has been disclosed, as Knox refused to answer any questions on any of these issues on cross-examination. Accordingly, no information as to where in Canada (Ontario or somewhere else) the shares are currently located has been disclosed. From the cross-examination of John Knox, all that was disclosed is that some time in 2000, the shares were sent to Vancouver, B.C. John Knox does not know where the shares are currently located and thus, it is entirely conceivable that the shares are no longer in Canada. Accordingly, while John Knox vaguely asserts that any issues with respect to the lodgement (of the shares in Canada) are to be litigated in Canada., no information has been provided as to the current location of the shares and there is no explanation why Canada was selected or is involved.

Affidavit of John Knox, Plaintiff's Motion Record, Vol. 2

Cross-examination of Knox, pp. 145-146

17. Notwithstanding the relevance of the questions, Mr. McKenzie repeatedly interjected and improperly refused to permit questions with respect to the following subject-areas:

(a) whether Knox's affidavits and Knox's answers on cross-examination would bind Nelson Barbados;

(b) the nature of the business of Nelson Barbados;

(c) Knox's relationship with Nelson Barbados;

(d) when Knox first met Mr. McKenzie and the purpose of the meeting;

(e) the location of the directors register of Nelson Barbados;

(f) the location of the shareholder register of Nelson Barbados;

(g) the location of the book and records of Nelson Barbados;

(h) the location of the minute book of Nelson Barbados;

(i) the location of banking documents of Nelson Barbados; and

(j) the location of financial statements of Nelson Barbados.

18. Further, and even though Nelson Barbados pleads (in paragraph 46 of the Amended Statement of Claim) that it had security over and ownership rights in common shares of Kingsland., Mr. McKenzie refused many questions relating to the security interest allegedly held by Nelson Barbados.

19. Mr. McKenzie also refused to permit questions concerning discussions

Knox may have had concerning the appropriate forum within which to bring the action. Accordingly, even though .forum shopping. is directly relevant to these motions (particularly given the tenuous standing of the corporate plaintiff), Mr. McKenzie refused to permit Knox to answer the question with respect to discussions he may have had with his mother or his sisters with respect to the appropriate forum or discussions he may have had with Mr. McKenzie or anyone else.

Cross-examination of John Knox, pp. 228-238 Q. 990

20. By his repeated interjections and improper refusals, Mr. McKenzie prevented defence counsel from obtaining information directly relevant to the status of Nelson Barbados, its business and its interest in the action. Each and every attempt made by the defence was thwarted with the intention, on the part of Mr. McKenzie, to carefully control Knox's answers and thereby limit answers prejudicial to the position of Nelson Barbados.

21. With respect to documents, and without prior notice, Mr. McKenzie produced a memory stick at Knox's cross-examination containing some 4,000 documents. Mr. McKenzie did not produce the documents prior to the cross-examination. Despite the requests of counsel, he also refused to identify which of the 4,000 documents he intended to rely upon for the motion. Further, and quite remarkably, all the documents on the memory stick were, in fact, provided to Knox by Mr. McKenzie.

22. It also became quite apparent that Knox had not made any independent inquiry, or any inquiry at all, to produce relevant hard-copy documents in response to the Notice of Examination. Knox admitted that he had other relevant documents in his possession that ought to have been produced at his cross-examination. In fact, his evidence is that he had 6 to 8 boxes of documents at his office in Barbados, in addition to the documents that

Mr. McKenzie provided to him. He also admitted that his sisters (Jane Goodard and Kathleen Davis) “would probably have files” and he said that his mother would also have files. Again, despite the relevance of these documents, none of the files were produced.

Cross-examination of John Knox, pp. 236-237

23. In addition to hard copy documents, Knox also admitted that he had electronic files in no fewer than 5 locations. None of these documents were produced. Mr. McKenzie even refused to permit the location of the files to be identified, other than by state or country, for reasons of alleged security concerns.

Cross-examination of John Knox, pp. 243-44

24. Most remarkably, Mr. McKenzie even objected and refused to permit Knox to answer questions about the location of documents in Canada.

Cross-examination of John Knox, p. 251

B. Action Initially Commenced by Nelson Barbados Investments Inc.

25. The tenuous connection of the action to Ontario is further demonstrated by the fact that counsel for the plaintiff initially asserted the claims (now made in the current action) through an entirely different corporate entity in an earlier action.

26. By statement of claim issued in Barrie on February 1, 2007, Mr. McKenzie commenced the very same claim (to the statement of claim subsequently issued by Nelson Barbados Group Ltd.) in the name of “Nelson Barbados Investment Inc.” under Court File No. 07-0110 (the “First Action”).

Affidavit of Ouellette sworn December 2, 2008

Statement of Claim of Nelson Barbados Investments Inc. issued February 1, 2007

under Court File No. 07-0110, Exhibit .A. to the Affidavit of Ouellette

27. Although the statement of claim in the First Action identified Nelson Barbados Investments Inc. as .an Ontario corporation which has its head office at Orillia, Ontario., a corporate search disclosed that .Nelson Barbados Investments Inc.. was not, and is not, an Ontario corporation.

Affidavit of Ouellette sworn December 2, 2008

28. Mr. McKenzie's office, therefore, commenced the First Action using a corporate entity (if an entity at all) that was not incorporated in Ontario. Presumably recognizing his error, Mr. McKenzie prepared a Notice of Discontinuance on March 19, 2007 which he caused to be filed with the Local Registrar in Barrie on March 26, 2007.

Affidavit of Ouellette sworn December 2, 2008

Exhibit .B. to the Affidavit of Ouellette, being the Notice of Discontinuance

29. Before Mr. McKenzie discontinued the First Action, he commenced a second and identical action (the .Second Action.) against the very same defendants by statement of claim issued by the local registrar in Barrie on February 9, 2007. The only difference between the statement of claim in the First Action and the statement of claim in the Second Action is the fact that "Nelson Barbados Group Ltd." replaced "Nelson Barbados Investments Inc." as

plaintiff and Lionel Nurse was added as a defendant. The title of proceeding and all allegations are otherwise identical.

30. As set out above, the current plaintiff appears to be a shell corporation, incorporated, or used, solely for the purposes of this action.

31. Further, and as indicated previously, notwithstanding that the plaintiff pleads (in paragraph 46 of the Amended Statement of Claim) that it had “security over ownership rights in common shares of Kingsland”, all questions respecting same were refused on the cross-examination of John Knox.

Cross-examination of Knox, pp. 252-256

32. In the result, therefore, Mr. McKenzie commenced the First Action in one corporation which he discontinued. He then asserted the identical claim in the Second Action in what is most assuredly a shell corporation, without assets. Mr. McKenzie objects to all questions concerning the affairs of Nelson Barbados and the security which Nelson Barbados allegedly holds in Kingsland which may, or may not, entitle it to assert a claim in Ontario. Equally disturbing, is Mr. McKenzie’s failure to produce documents in a timely fashion; his failure to identify relevant documents (of the 4,000 on the memory stick); his failure to ensure that other relevant documents were produced by Knox; and his refusal to permit questions with respect to discussions that may have taken place regarding forum shopping.

C. Summary of the Allegations in the Amended Statement of Claim

33. The Amended Statement of Claim discloses virtually no connections to Ontario. For example:

(a) paragraph 1 of the Amended Statement of Claim seeks a variety of

injunctive and other relief (accounting, disgorgement, even appointment of a Receiver or Receiver Manager) against or relating to Kingsland, described in the Statement of Claim as a company incorporated in Barbados, with its head office in Barbados, and which owns property in Barbados;

(b) while a small number of defendants located in Ontario are named in the Amended Statement of Claim, any connection between them and a cause of action is virtually impossible to discern from the pleading, as all of the defendants are simply lumped together in general allegations that the defendants, somehow, owed fiduciary duties towards Kingsland (in Barbados), which were breached (in Barbados), or that the defendants somehow conspired to deprive Kingsland of the value of its investment (in Barbados) or withheld confidential information from Kingsland (in Barbados); and

(c) even the particulars of the conspiracy pleaded in paragraph 63 disclose no connection between the action and Canada, let alone Ontario.

34. Aside from references to Ontario in identifying a small number of the parties and their addresses, in paras. 2-5, 8, and 40 of the 72-paragraph Amended Statement of Claim, and references to Ontario respecting service rules and location of the trial, Ontario is not otherwise referred to in the pleading. “Canada” is only referred to in the context of addresses, the relief claimed and in assertions rebutted by the evidence that three of the defendants carry on business in Canada. Two of those three defendants have provided uncontradicted evidence that, in fact, they do not carry on business in Canada.

Amended Statement of Claim, Bannister Motion Record,

Tab 2A, paras. 1, 2-5, 8, 11, 12, 23, 28, 40

35. The evidence of the Plaintiff’s affiant, John Knox, also fails to disclose any

real and substantial connection between the cause of action and Ontario. The plaintiff alleges some kind of a conspiracy between certain defendants who made a failed offer (and lost their deposit) to purchase all shares in Kingsland between 1990 and, at latest, 1994 (described as the .Brown Bannister Plan. or the .S.B.G. Offer., and briefly summarized in the Schedule A-4 relating to parties represented by Blakes), with subsequent actions, by other defendants who did acquire a majority interest in Kingsland Estates Limited many years later (led by Classic Investments Limited). However, the plaintiff provides absolutely no particulars of the alleged conspiracy, which is denied by the parties involved in the earlier, failed transaction, many of whom submitted affidavits and were subjected to cross-examination by Mr. McKenzie.

36. In sum, the Amended Statement of Claim, and even the evidence filed by the Plaintiff on this motion, provides no support for the Plaintiff assertion that there is a real and substantial connection between the cause of action and Ontario.

D. Multiplicity of Proceedings: Litigation In Barbados

(a) History of related proceedings in Barbados

37. There have been several proceedings commenced, in Barbados (some of which are still pending) which address the very issues raised in the within proceeding.

38. First, following the failed SBG transaction (at the latest, 1994), in or about

1997, Classic offered to purchase the Kingsland shares. All Kingsland

shareholders, with the exception of Marjorie Knox, agreed to sell their shares of

Kingsland, pursuant to the Classic offer. An action was commenced in Barbados

in respect of the acquisition, which was not resolved until 2005, after which the transaction was completed. That action included:

(i) Suit No. 1805 of 1998 - an action against the then shareholders and directors of Kingsland and Classic for a declaration that Mrs. Knox was entitled to certain pre-emptive rights to purchase the shares of Kingsland in priority to Classic and for an oppression remedy and other relief. The action was dismissed by Greenidge, J. on June 14, 2001;

Affidavit of Clyde Turney sworn May 21, 2007, par. 42

Motion Record filed by Cassels, p. 35

(ii) Civil Appeal No. 17 of 2001 - Mrs. Knox appealed Justice Greenside's decision to the Barbados Court of Appeal. Her appeal was dismissed on April 16, 2003; and

Affidavit of Clyde Turney sworn May 21, 2007, par. 43

Motion Record filed by Cassels, p. 35

(iii) Suit No. 9 of 2001 - Mrs. Knox appealed the decision of the Court of Appeal of Barbados to Her Majesty in Council (the Judicial Committee of the Privy Council) (Suit No. 9 of 2004). This final appeal was dismissed on June 28, 2005. Following the dismissal of Mrs. Knox. appeal to the Judicial Committee of the Privy Council, Classic proceeded with the acquisition of 86.042% of the shares of Kingsland, which acquisition was completed in December, 2005.

Affidavit of Clyde Turney sworn May 21, 2007, paras. 44 and 45

Motion Record filed by Cassels, p. 36

39. Second, in January, 2006, Kingsland's new directors contracted to sell beachfront property called Maxwell Coast Road in the Parish of Christ Church. Mrs. Knox refused to sign a release of her share of a charge on the property in favour of the former shareholders of Kingsland, despite an offer of payment in full of all monies due to her by Kingsland. Originally, in Suit No. 1683 of 1993 in the High Court of Justice of Barbados, the owner of the charge, Andefan Holding Limited (.Andefan.), obtained Judgment against Kingsland. That Judgment was paid by the shareholders of Kingsland to whom the securities held by Andefan were assigned. Kingsland then made a successful application to redeem Mrs. Knox. share of the Andefan securities on payment of the debt owed to her. Notwithstanding Justice Goodridge's decision in this regard dated July 24, 2006, Mrs. Knox refused to sign the release of her share of the Andefan securities and the Court therefore directed the Registrar of the Supreme Court of Barbados to execute such release for and on behalf of Mrs. Knox following the payment of monies due to her into Court by Kingsland.

Affidavit of Clyde Turney sworn May 21, 2007, paras. 46 . 48

Motion Record filed by Cassels, pp. 36, 37

40. Mrs. Knox appealed the Order of Goodridge, J. and this appeal has been dismissed. It is specifically noted that in the course of the redemption proceedings above described, Mrs. Knox swore and filed an Affidavit dated May 3, 2006 in which she stated that Nelson Barbados Investments Inc. had been appointed a receiver of Kingsland. This is the same company that commenced proceedings in 2007 (Ontario Superior Court of Justice Action No. 07-0110), which proceedings were subsequently abandoned.

Affidavit of Clyde Turney sworn May 21, 2007, paras. 49-51

Motion Record filed by Cassels, p. 37

41. Third, on or about July 21, 2006, Mrs. Knox, without any authority whatsoever, procured the appointment of joint receivers of all of the undertakings and assets of Kingsland under and by virtue of her share of the Andefan securities. In the result, Kingsland commenced proceedings in the High Court of Justice (Suit No. 1332 of 2006) and obtained an injunction to restrain the receivers from acting. The High Court of Justice held that the appointment of the receivers was improper. Kingsland's claims against Mrs. Knox and the receiver for damages, interest, costs and other relief is still pending in the Courts of Barbados.

Affidavit of Clyde Turney sworn May 21, 2007, paras. 52 and 53

Motion Record filed by Cassels, p. 38

42. As well, Mrs. Knox has brought other proceedings against Kingsland and others named as defendants in the Ontario action, as follows:

(i) Suit No. 1993 of 2003 . action against Eric Ashby Bentham Deane, Owen Basil Keith Deane, Philip Vernon Nicholls and Kingsland alleging oppression and seeking disclosure of various documents, statements and records of Kingsland;

(ii) Suit No. 1379 of 2006 . action against Eric Ashby Bentham Deane, Richard Ivan Cox, Gerard Cox, Allan Cox and Kingsland for oppression, an injunction to restrain the sale of the Maxwell Coast Road, Christ Church property and the appointment of a receiver/investigator of Kingsland and for other relief. This action was consolidated with Suit No. 993 of 2003. In Suit No. 1379 of 2006,

the Court refused to make the order requested and the Court of Appeal refused to grant leave to appeal the said decision. The substantive case is still pending before the Courts of Barbados; and

(iii) Suit No. 2141 of 2006 . action against Eric Ashby Bentham Deane, Richard Ivan Cox, Gerard Cox, Allan Cox, Kingsland, the Attorney General of Barbados and PricewaterhouseCoopers for leave to bring a derivative action in the name of Kingsland against the Attorney General for compensation for the compulsory acquisition of certain lands of Kingsland in Barbados under the Land Acquisition Act, CAP 228 of the Laws of Barbados. This action has been discontinued and Mrs. Knox was ordered to pay costs.

43. Further, there have been a plethora of Affidavits filed in the proceedings in Barbados identified above. Most commonly Affidavits have been filed either by Marjorie Knox or by her son John Knox (the Plaintiff's affiant in this case) on her behalf. On cross-examination, John Knox identified and attested to the authenticity and veracity of sample Affidavits sworn by either himself or his mother in the Barbadian proceedings, as follows:

(i) two Affidavits in Suit No. 1805 of 1993 (Exhibit "4");

(ii) six Affidavits in Suit No. 1683 of 1993 (Exhibit "5");

(iii) nine Affidavits in Suit No. 1379 of 2006 (Exhibit "6");

(iv) one Affidavit in Suit No. 2141 of 2006 (Exhibit "7");

(v) three Affidavits in Appeal Suit No. 21 of 2006 (Exhibit "8"); and

(vi) one Affidavit in Suit No. 1332 of 2006 (Exhibit "9").

44. The Affidavits confirm that the positions taken in the within action, to the extent that they are known, are substantially similar and arise out of the same facts and circumstances as the matters addressed in the Barbadian proceedings.

(b) Stay of Barbados Proceeding Denied

45. It should be noted that, in the consolidated proceedings (Suit No. 1379 of 2006 and Suit No. 993 of 2003), Marjorie Knox applied for a stay of the Barbadian action in favour of the Ontario action. This request was dismissed by the Court of Barbados.

Cross Examination of John Knox, pp. 107-108

46. The Amended Statement of Claim in the Ontario proceeding focuses on Kingsland and its assets. To the extent that the causes of action are discernable, they are substantially similar and arise out of the same facts and circumstances as the claims and issues that have already been dealt with by, or are pending before, the Courts of Barbados.

Affidavit of Clyde Turney sworn May 21, 2007, par. 54A

Motion Record filed by Cassels, p. 40

E. The Barbados Justice System

47. The plaintiff asserts in its pleading that it cannot obtain justice in Barbados because the government of Barbados is “so indebted or has become insolvent” and because “some of the co-conspirators are members of the judiciary and governing party”. In his affidavit Knox (who is not a lawyer) makes vague and generalized allegations of concerns with the Barbados justice system, ranging

from issues about delays and court backlogs (issues not unique to Barbados), to concerns about access to court reporters and transcripts, to the English practice followed in Barbados that there is no oral discovery. Interestingly, the only information he attests to as having come from a lawyer, Alair Shepherd (who is counsel to Marjorie Knox and a “senior and experienced barrister in Barbados”, but who has not submitted an affidavit) is a vague assertion that facilities are “not sufficient and that often leads to the necessity of adjournments and postponements” (**Knox Affidavit, para. 137**). Otherwise, the evidence is simply unsourced and unsupported assertions by Knox. Knox also makes the outrageous assertion, presumably in support of an innuendo that the Courts are corrupt, that the Chief Justice “delivered judgment in a case where he had previously represented one of the parties”. (**para. 107**) As set out below, this is completely answered and explained in the written judgment. And on cross-examination, Knox admitted that he “probably” did not read the judgment before making the allegation, that this was just his “surmise”, and when shown the judgment and asked whether it refreshed his memory as to whether he had seen it, or Mr. McKenzie had shown it to him before swearing the affidavit (Mr. McKenzie commissioned it in Miami), Mr. McKenzie prevented Knox from answering any questions.

Knox Affidavit, paras. 39, 73-78, 86-88, 107, 136-144

Cross-Examination, pp. 314 . 327

48. These allegations are either completely unsupported, or utterly and fully refuted by the evidence of the defendants, in particular from the Chief Justice, (who was cross-examined for two long days, and for a significant portion of that on court procedures alone). For example:

a. There is no evidence whatsoever that Barbados cannot satisfy a judgment against it. Indeed, Knox’s evidence is completely to the contrary, noting that

significant funds from the government have been available to Kingsland (**para. 102**). As well, this is rebutted by the Chief Justice, Sir David Simmons (**May 17/07 Affidavit, para 17**)

b. As to facilities and court reporting, Sir David Simmons described in considerable detail the new courthouse in Bridgetown, which will open in January 2009 a state of the art building, with 15 new courtrooms, four or five chamber courts, separate areas for judges and the public, and for juries and prisoners, and the latest technology (**cross-examination, p. 100, 304-309; re-examination, pp. 600-604**). Even Knox agreed that the new building is “impressive” and “is a big modern building that has got many new courtrooms and justice facilities”. (**Knox, cross, pp. 313-314**) Despite this, Mr McKenzie pursued questions filling up 25 pages of transcript just on the funding for the project by the Inter- American Development Bank. (**Sir David Simmons cross, pp. 309- 334**)

c. There are 14 .CAT. (computer aided technology) reporters who do verbatim transcripts of all criminal trials, and may be assigned to civil matters (**Sir David Simmons Affidavit March 10/08, para. 6, cross, pp. 219-221**). Indeed, even Knox gives an example of using a court reporter in civil matters (**para. 87**). If there is a CAT reporter on a civil trial then a verbatim transcript is used for any appeal. (**Re-examination, p. 599**)

d. As to delays in releasing judgments, the Chief Justice dealt with this in his protracted cross-examination, noting that Mr Shepherd would write from time to time about delays, particularly from a judge who is now retired, and which the Chief Justice dealt with promptly. (**cross-examination, pp. 174-175, 278-283**)

e. The allegation that the Chief Justice rendered judgment in a case in which he had previously been counsel is dealt with fully and completely by him in his

March 10, 2008 Affidavit at para. 7, in which he says that it “is false in the extreme”. He notes that his role in signing the judgment is explained in the judgment itself, stating that he simply signed it on behalf of one of the judges who had participated in the decision but was physically unable to sign it. This judgment, with the explanation on its face, is attached to Sir David Simmons. Affidavit of 10 March 2008 as Exhibit “A” (see, in particular, Responding Motion Record of Simmons et al. at page 31, filed by Blakes, and Cross of Sir David Simmons, page 524). It seems that neither Knox or Mr. McKenzie bothered to look at the judgment (or else ignored it, if Mr. McKenzie saw it), before including this scandalous allegation in Knox’s Affidavit. **(Knox cross pp. 314-327)**

f. The issue of sitting at first instance is addressed at para. 8 of the Chief Justice’s March 10, 2008 Affidavit. On cross-examination, the Chief Justice also addressed this, noting that he rarely sits in the High Court and usually only in circumstances where it is a ‘heavy case’, sometimes at the invitation of the lawyers. **(cross, pp. 77-78)** There are 13 Supreme Court judges in Barbados, five of whom sit on the Court of Appeal and eight on the High Court. **(cross, page 104)** Appeals from Barbados now go to the Caribbean Court of Justice. Sir David Simmons was instrumental in establishing the Court, but now has nothing to do with it. **(Cross, pp. 130 . 133)**

g. The Chief Justice has studiously avoided ever sitting on matters to do with Kingsland Estates Ltd., a point Mr. McKenzie also cross-examined on **(March 10, 2008 Affidavit, para. 2; Cross, pp. 273-275)**

h. The Chief Justice, on cross-examination, produced publications dealing with the justice system in Barbados, including the Report of the Judicial Council 2005 **(Exhibit 4, Cross, pp. 135-141)**, which addresses issues such as facilities, security, backlog reduction, new rules, continuing education, judgment writing workshops (run by John Laskin J.A.), law reports and publication of judgments, and the Guide to Judicial Conduct **(Exhibit 6, see**

cross, pp. 175-176, and pp. 271-272), published by the Judicial Council of Barbados. There is also a Rules Committee and the Rules are published and updated. (Cross-examination of Sir David Simmons, pp. 89 . 91) Barbados is implementing the use of new Judicial Enforcement Management Software (JEMS) to track cases and make the system more efficient. Even now, however, if the lawyers are diligent a case can be heard by the trial judge within 18 months. of the issuance of the Writ of Summons. (Cross, pp. 106-108) A Backlog Reduction Committee exists, and judges are sent to England for training on case management. (Cross, p. 109-112)

i. In cross-examination, the Chief Justice also noted that the civil rules under which Barbados operates are the same as those which existed in England between 1982 and 1999, prior to the reforms of Lord Woolf. Next year, the rules in Barbados will change to implement procedures based on the 1999 rules, including Case Management. As the Chief Justice put it, “Between the judges, the Master, the Registrar and the technology which we have purchased for introduction in the new Supreme Court, we will draw a curtain over those days that have gone, and the court will take control of the pace of litigation”. (Cross-examination, pp 81 - 83, 88-89, 94-100) These reforms will “reduce delays in the justice system” by preventing lawyers from taking steps to “spin out a case”. As Sir David stated, “we have to accelerate the pace of delivering justice to people, and we hope that this new system, a new court with technology in the rooms will assist us in attaining that objective”. (Cross, p. 102) The Chief Justice also noted that the judges are assisted by law clerks, .judicial assistants., four of whom are hired each year who are qualified attorneys at law. (Cross, p. 335 -336)

j. Although, as in England, there is no oral discovery process, the Chief Justice described in detail the documentary discovery steps that are followed in Barbados, and also the .interrogatory. process of asking questions which must be answered “on oath”. (Cross, pp. 117-127). Under the new rules, there will be a requirement of detailed witness statements which can be used as

evidence in chief at trial. **(Cross, p. 129)**

k. The Chief Justice states in his Affidavit that allegations made in the Statement of Claim are “scandalous and offensive”, noting that “[t]he judiciary of Barbados has earned a high and deserved reputation for fairness, impartiality, integrity and incorruptibility not only in Barbados, but throughout the Caribbean and the wider world”. **(May 17, 2007 Affidavit, para. 18)** The Chief Justice was also cross-examined on the process for dealing with judicial complaints, noting that there are constitutional procedures for dealing with complaints and establishing tribunals of independent persons to deal with matters “the usual thing that you have in most countries which have the Westminster model Constitution”. **(cross, pp. 158-164)** “[D]espite what you have alleged in your Statement of Claim, there has never been any allegation whatsoever, Mr. McKenzie, of any misconduct or corruption against any judges in Barbados. And international independent bodies have given Barbados. judiciary the highest possible marks, and our judicial system, and the independence of the judiciary”. **(cross, p. 164)** Mr. McKenzie then went on, without success, for many pages trying to challenge the Chief Justice on this point **(pp. 164- 174)**.

l. On a personal level, the Chief Justice noted that when he was appointed his wife, who was a High Court judge, resigned as “it would not be right to have the two of us on the court in a small country, and she resigned and lost a lot of money. . She might have had another six years. She gave up all that because we thought it was the right thing to do, Mr. McKenzie”. **(Cross, pp. 358-359)**

m. Mr McKenzie also attempted to get into the Nitin Amersey matter involving litigation between the Government of Barbados and Carsicot. Despite being referred to Justice Shaughnessy’s ruling on the motion for directions, at paragraph 26 of his Reasons, that the allegations of Amersey .are unreliable and not relevant to the issues on the jurisdictional motion. and that Mr. Nitn

Amersey has no connection, direct or indirect, to the subject matter of the litigation., and refusing to explain why he felt the matter was relevant, Mr. McKenzie spent several hours and filled up approximately 200 pages of transcript attempting to question the Chief Justice about this matter . much of which related to facts dating to the 1980s and which Sir David Simmons only involved himself in directly, in resolving the matter, when he was Attorney General. (see **Cross-examination, pp. 377 . 580, especially at p. 384**). Mr. McKenzie, in the course of doing this, also referred to numerous newspaper articles that he wished to mark (**Exhibit A to cross**), which included putting exhibits to Sir David that had sections blacked out (though Mr. McKenzie had clean copies himself) and which so exasperated the Chief Justice that even he commented that the examination was “unfair” (pp. e.g., 471-474, 569), McKenzie was “nasty” (p. 560), and that the examination had become an “imposition” (p. 489). Indeed, Despite several requests by counsel and the Chief Justice for Mr. McKenzie to explain how any of this could be relevant, Mr. McKenzie never responded. (e.g., pp. 377 -384, 397, 439, 441, 489, 515-517, 523, 546, 556, 560, 565, 568-577) Similar efforts were made to cross-examine Peter Simmons on the Amersey matter (pp, 88-95). (Mr. McKenzie also tried to cross-examine both Peter and David Simmons on other matters relevant to the already-decided motion for directions (**David Simmons, pp. 227-242, 259 . 270; Peter Simmons, pp. 88- 95**).)

F. Location of Witnesses and Evidence

49. The evidence on the motion demonstrates that the vast majority of parties, witnesses, and evidence are situated in Barbados. Indeed, only a few defendants are located in Canada (two others are in Alaska and the U.K.).

50. The alleged transactions, to the extent they are relevant to the plaintiff’s claims, took place in Barbados and concern property and assets located in Barbados.

51. Although the plaintiff is said to be located in Ontario, it is a corporation, with its head office at the plaintiff solicitor's office. The affidavit put forward by it on this motion, John Knox, is a Barbados resident, and is the son of the defendant Marjorie Knox, who has been pursuing these very issues in the Barbados courts for years. She too, resides in Barbados. All questions regarding the plaintiff, and any connection to Ontario, were refused.

52. Other than the vaguest of assertions, by John Knox, that evidence would be located in Ontario, there is simply no credible support for the assertion that there are any documents, witnesses, or other evidence in Ontario relevant to claims concerning Kingsland.

ISSUES AND LAW

53. There are three principal issues raised for consideration by this Honourable Court in the Moving Defendants' motions to stay or dismiss this action:

- (a) Whether the originating process was properly served outside of Ontario;
- (b) Whether this Honourable court has jurisdiction simpliciter over the parties and the issues raised for determination in the Amended Statement of Claim; and
- (c) Whether, if jurisdiction simpliciter exists, should this Honourable Court nevertheless decline jurisdiction pursuant to the doctrine of forum non conveniens.

A. Service Ex Juris Was Not Authorized

54. Where a foreign defendant has been served with an originating process on the basis of 17.02, that party may challenge the jurisdiction of the court through

one of several procedures:

(a) A motion under Rule 17.06(1) to set aside service or to stay the proceeding;

(b) A motion to stay under section 106 of the Courts of Justice Act; and/or

(c) A motion under Rule 21.01(3)(a) to stay or dismiss the action where the court has no jurisdiction over the subject matter.

Courts of Justice Act, R.S.O. 1990, c. C.43, s.106

Rules of Civil Procedure, R.R.O. 1990, Reg 194, Rules 17.06(1),21.01(3)(a)

55. The Plaintiff's Statement of Claim fails to explain why service ex juris is applicable or authorized by Rule 17.02 of the Rules of Civil Procedure. On this basis alone, the motion to dismiss or stay this proceeding should be granted. Rules of Civil Procedure, R.R.O. 1990, Reg 194, Rules 17.02, 17.06(1) and (2).

56. Rule 17.04(1) requires that any originating process served outside Ontario without leave of the Court must disclose the facts and specifically refer to the provisions of rule 17.02 relied on in support of such service.

Rules of Civil Procedure, R.R.O. 1990, Reg 194, Rule 17.04(1)

57. The Amended Statement of Claim does not provide the factual basis required by the Rules of Civil Procedure to support service ex juris under Rule 17.02. There is no evidence to suggest there was a contract made by the parties in Ontario, nor does the Amended Statement of Claim allege any facts to support a claim that there was a tort committed in Ontario or damage suffered by the Plaintiff in Ontario. Consequently, on the basis of improper

service alone, this action should be stayed.

B. There is No Real and Substantial Connection Between this Action and Ontario

58. The Moving Defendants respectfully submit that, regardless of whether service ex juris was authorized by the Rules of Civil Procedure, this action should nevertheless be dismissed or stayed as against them on the basis that the Ontario courts do not have jurisdiction simpliciter over this proceeding.

59. In determining whether an action against a foreign defendant should proceed in Ontario the Court must determine whether Ontario can assume jurisdiction, given the relationship among the case, the parties and the forum.

Muscutt v. Courcelles (2002), 60 O.R. (3d) 20 (C.A.), at pp. 35-6

Canadian International Marketing Distributing Ltd. v. Nitsuko Ltd.

(1990), 56 B.C.L.R. (2d) 130 (C.A.), at p. 132

Jordan v. Schatz (2000), 77 B.C.L.R. (3d) 134 (C.A.), at pp. 141-142

Lemmex v. Sunflight Holidays Inc. (2002), 60 O.R. (3d) 54 (C.A.), at p. 62

60. Jurisdiction simpliciter is the most basic form of jurisdiction that a court must have before it can properly hear a matter. The determination of jurisdiction simpliciter is not a matter for the court's discretion; jurisdiction either exists or it does not.

Plant Technology International Inc. v. Peter Kiewit Son Co., [2002]

O.J. No. 2305 (S.C.J.) at paras. 56-57.

61. Where a plaintiff seeks to bring foreign defendants into an Ontario court, as is the case here, the burden rests with the plaintiff to establish that the Ontario court has jurisdiction simpliciter in the event that jurisdiction is challenged. *Frymer v. Brettschneider* (1994), 19 O.R. (3d) 60 (C.A.) at 84-85. *M.J. Jones Inc. v. Kingsway General Insurance Co.*, [2003] O.J. No. 4409 (S.C.J.) at para 27, *aff.d* [2004] O.J. No.1087 (C.A.) (i)

i. Adverse Inference Should be Drawn Against Plaintiff

62. The defendants submit that, in order to assess the factors of the real and substantial connection test and the forum non conveniens test (set out below) in the circumstances of this case, the defendants' evidence should be preferred to the evidence of the plaintiff where such evidence conflicts. Much of the evidence put forward by the plaintiff, through John Knox, is based on information and belief from unidentified sources, is vague, generalized, often confusing, and unsupported and/or incorrect. Furthermore, cross-examination of Knox on relevant issues was almost completely frustrated by Mr. McKenzie, as critical questions going to the connections between this jurisdiction and the plaintiff corporation and the action were refused.

Cross-Examination of John Knox, pp. 39-61

63. Courts have been encouraged to insist on the best evidence rule, namely that parties should put forth contentious evidence from the person with the most direct knowledge. If the best evidence is not available, the deponent testifying to the hearsay information should explain expressly why the evidence of the best person hasn't been provided.

Children's Aid Society for Huron & Perth v. H.(C)., [2008] W.D.F.L.

3415, citing Csak v. Mokos (1995), 18 R.F.L. (4th) 161 (Ont. Master),

at para. 34

Mapletoft v. Service, [2008] O.J. No. 693, at para. 11

64. Where the best evidence is not provided and no adequate explanation is offered for such failure, the court may, and the defendants submit in this case should, draw an adverse inference from this failure. The conclusion to be drawn by the court is that the evidence would not have been supported by that individual.

Prodigy Graphics Group Inc. v. Fitz-Andrews, [2000] CarswellOnt

1178 (Ont. S.C.J.), at para. 47

(ii) Real and substantial connection required

65. In *Morguard Investments Ltd. v. De Savoye*, the Supreme Court of Canada moved away from traditional conflict of laws rules and set out a new standard for establishing jurisdiction simpliciter based on the principles of order and fairness, the need for judicial restraint and the creation of the .real and substantial connection. test. While *Morguard* involved the enforceability of judgments as between provinces, the Supreme Court of Canada has made clear that the same real and substantial connection test will be applied in an international context.

Morguard Investments Ltd. v. De Savoye (1990), 76 D.L.R. (4th) 256 (SCC) at p.278.

Beals v. Saldanha, [2003] S.C.J. No. 77 at paras. 19, 21 and 28.

66. The “real and substantial connection” test established in *Morguard* is designed with the recognition that some limits must be placed on the exercise of jurisdiction and that assumption of jurisdiction “must ultimately be guided by the requirements of order and fairness, not a mechanical counting of contacts or connections.”

Hunt v. TLN plc, [1993] 4 S.C.R. 289 at p. 325.

67. The Supreme Court of Canada has emphasized that the connection between the action and the jurisdiction must be substantial: “The real and substantial connection. test requires that a significant connection exist between the cause of action and the foreign court. Furthermore, a defendant can reasonably be brought within the embrace of a foreign jurisdiction’s law where he or she has participated in something of significance or was actively involved in that foreign jurisdiction. A fleeting or relatively unimportant connection will not be enough to give a foreign court jurisdiction. The connection to the foreign jurisdiction must be a substantial one.” [emphasis added]

Beals v. Saldhana, supra at para. 32

68. In a series of cases, the Court of Appeal for Ontario provided further clarification and guidance regarding how the .real and substantial connection. test should be applied in practice. The focus of this jurisdictional analysis is to be on the existence of connections between the issues raised in the proceeding, the parties and the forum.

Lemmex v. Sunflight, supra

Sinclair v. Cracker Barrel Old Country Store Inc. (2002), 60 O.R. (3d) 76 (C.A.)

Leufkens v. Alba Tours International Inc. (2002), 60 O.R. (3d) 84 (C.A.)

Gajraj v. DeBernardo (2002), 60 O.R. (3d) 68 (C.A.)

Muscutt v. Courcelle, supra

69. In *Muscutt v. Courcelles*, the Court of Appeal for Ontario recognized that the test for a real and substantial connection is, by necessity, a flexible one which defies reduction to a fixed formula. However, the Court acknowledged the need for clarity and certainty by providing a list of eight, non-exhaustive factors that should be considered in assessing whether a real and substantial connection with Ontario exists. These factors, of which no single factor is determinative, are as follows:

- (i) The connection between the forum and the Plaintiff's claim;
- (ii) The connection between the forum and the defendant;
- (iii) Unfairness to the defendant in assuming jurisdiction;
- (iv) Unfairness to the plaintiff in not assuming jurisdiction;
- (v) The involvement of other parties to the suit;
- (vi) The Court's willingness to recognize and enforce an extraprovincial judgment rendered on the same jurisdictional basis;
- (vii) Whether the case is interprovincial or international in nature; and
- (viii) Comity and the standards of jurisdiction, recognition and enforcement prevailing elsewhere.

Muscutt v. Courcelles, supra at paras. 75-110.

70. A review of each factor in the circumstances of this proceeding demonstrate that there is no real and substantial connection between Ontario and the subject matter of this action, or between Ontario and the parties to the action. To the contrary, there is a real and substantial connection with the jurisdiction of Barbados where nearly all of the Moving Defendants reside and work and where actions are already on-going in respect of these same allegations.

(i) Connection Between the Forum and the Plaintiff's Claim

71. The Plaintiff's claim in this proceeding is based in negligence, the tort of conspiracy and tortious interference with the Plaintiff's economic interests. The conduct or alleged wrongdoing to support these claims occurred entirely in Barbados and not in Ontario. And the economic interests in issue relate to assets in Barbados.

72. The Plaintiff is an Ontario corporation with an address identical to that of Mr. McKenzie in Orillia (right down to the Post Office Box number). While the courts have acknowledged that Ontario has an interest in protecting the legal rights of its residents and providing a forum in which to litigate disputes, the courts have also consistently recognized that mere residency of the plaintiff within Ontario, without something more, is an insufficient basis for assuming jurisdiction over an action.

Muscutt v. Courcelles, supra at para 79

Ioannides v. Calvalley Petroleum Inc. 2006 CarswellOnt 4581 (S.C.J.) at para. 23

73. Damage suffered within Ontario is a factor which may be considered in the

jurisdictional analysis to connect the Plaintiff to the forum. However, like residency, damages alone cannot ground a finding of jurisdiction in any particular case and it will only be in limited circumstances that damage sustained within the jurisdiction as a result of a wrong committed elsewhere are accepted as a basis for jurisdiction simpliciter. In any event, there is no evidence of any damage suffered in Ontario.

Muscutt v. Courcelles, supra at paras. 77, 80-81, 105

Leufkens v. Alba Tours, supra at para. 36

Ioannides v. Calvalley Petroleun, supra at para. 23

74. Even if a plaintiff continues to suffer damages in Ontario after sustaining an injury outside the jurisdiction (assuming this happened), this does not create a real and substantial connection between Ontario and the action.

ECS Educational Consulting Services Canada Ltd. v. Al Nahyan [2000] O.J. No. 211 26-27 (S.C.J.)

75. The Plaintiff corporation was incorporated in late 2005. Its registered office is the office of the Plaintiff's counsel in this litigation. The Plaintiff refused to answer any questions as to the identity, location or residence of any of the Plaintiff corporation's officers, directors or shareholders. It is submitted that an adverse inference ought to be drawn, and the assumption made that those individuals . and any damage they may have suffered - have no connection to Ontario.

(ii) Connection Between the Forum and the Defendants

76. In considering whether there is any connection between the forum and the

defendants, courts must have regard to two considerations:

(i) whether the defendants did anything in Ontario which bears upon the Plaintiff's claim; and

(ii) whether it was reasonably foreseeable that the defendant's action would cause damage outside Ontario.

In *Muscutt*, the Ontario Court of Appeal stated that: [W]here the core of the action involves foreign defendants, courts should be wary of assuming jurisdiction simply because there is a claim against a domestic defendant.

M.J. Jones Inc. v. Kingsway General Insurance Co., [2003] O.J. No. 4409 (S.C.J.) at para. 30.

Muscutt v. Courcelles, supra at paras. 82-83 and p. 48

77. In the case at bar, there is no evidence that any of the Moving Defendants have any substantial connection to Ontario. As set out in the schedules hereto, nearly all of the moving Defendants are located in Barbados (with one also located in Alaska, another in British Columbia and another in England). No specific allegation has been made that any conduct related to the subject matter of the Plaintiff's claim occurred in Ontario. Moreover, only five of the sixty-three defendants are identified as being located in Ontario, about whom the pleading says virtually nothing, and Knox says little more. The very limited involvement of two men from Ontario in a failed bid, done entirely in Barbados, to acquire Kingsland (and very briefly described in the Schedules dealing with parties represented by Blakes), cannot be a basis for finding jurisdiction.

78. In light of the fact that none of the Moving Defendants have any connection to Ontario, the Moving Defendants could not have reasonably foreseen that any

conduct they engaged in in Barbados would result in an action being commenced against them in Ontario. Consequently, this factor favours declining jurisdiction.

(iii) Unfairness to the Defendants in Assuming Jurisdiction

79. The principles of order and fairness require this Honourable Court to have regard to any other considerations which make assuming jurisdiction unjust to the Moving Defendants.

Muscutt v. Courcelles, supra at para. 86

80. Where a defendant has confined its activities solely to another jurisdiction, the courts will generally consider it unfair and unduly onerous to require that defendant to defend an action in the home jurisdiction of the plaintiff.

Lemmex v. Sunflight, supra at para. 35.

81. In determining whether it would be unfair to the defendants to decline jurisdiction, their reasonable expectations are relevant.

Muscutt v. Courcelles, supra at para. 88

Gajraj v. De Bernardo, supra at para. 18

82. It would be inherently unfair to the Moving Defendants for this Honourable Court to assume jurisdiction over this dispute for the following reasons:

(a) The Moving Defendants reside and/or carry on business in locations outside Ontario, overwhelmingly in Barbados, and would have to travel to Ontario to testify if this matter were to proceed in Ontario;

(b) Most, if not all, of the witnesses reside outside of Ontario and are located in Barbados.

(c) the vast majority of the files and documentary evidence relevant to this case are located in Barbados, and were prepared in Barbados according to Barbadian law and legal practices. Some other documentation of non-Barbadian defendants is located in Alberta, British Columbia and Alaska, but not in Ontario; and

(d) The majority of the Moving Defendants would be required to essentially litigate this matter twice, as similar actions involving the same allegations and substantially the same parties have been brought in Barbados.

(iv) Unfairness to the Plaintiff in Not Assuming Jurisdiction

83. In applying the real and substantial connection test to the facts in a case, the principles of order and fairness require consideration of a Plaintiff's interest in accessing the courts in its home jurisdiction. It is respectfully submitted however that, on the facts in this case, there is no unfairness to the Plaintiff if this Court does not assume jurisdiction in this matter.

Muscutt v. Courcelles, supra at para. 88

84. The general concern of the courts in assessing possible unfairness to the plaintiff in declining jurisdiction centres on whether it is reasonable to compel the plaintiff to travel abroad in order to litigate its claim and involves an assessment of the inconvenience that would result.

Muscutt v. Courcelles, supra at para. 90

85. Both the Supreme Court of Canada and the Court of Appeal for Ontario

have recognized that where a party takes positive and important steps that bring it within the proper jurisdiction of a foreign court, the fear of unfairness related to the duty to litigate in that jurisdiction is lessened.

Beals v. Saldanha, supra

Leufkens v. Alba Tours, supra

Lemmex v. Bernard, supra

86. Here, the plaintiff (whoever it is) has chosen to acquire an interest of some kind in shares of a Barbados company that owns land in Barbados, where all the other shareholders reside, and where all transactions relating to that company have occurred in accordance with, or subject to, Barbados law. Any assertion of unfairness to the plaintiff in Ontario declining jurisdiction, therefore, is unfounded.

87. Further, even if Ontario were to assume jurisdiction in this matter, the Plaintiff could not, in any event, execute judgment which may be rendered by this Honourable Court in Ontario for the simple reason that the Moving Defendants have no assets or business in Ontario. Of necessity, another action would have to be commenced in Barbados in order to execute any judgment. If the Plaintiff's claim was advanced from the outset in Barbados, any judgment given in its favour would be readily enforceable and a stay of this proceeding would obviate the need for legal costs of additional enforcement proceedings.

(v) Involvement of Other Parties to the Suit

88. Courts will also consider the involvement of any other parties to the action in a jurisdictional analysis with a view to avoiding both a multiplicity of proceedings and inconsistent results.

Muscutt v. Courcelles, supra

89. The existence of other domestic defendants in an action may favour an Ontario court assuming jurisdiction in order to avoid multiple proceedings; however this is only the case where the core of the action lies in Ontario. The presence of domestic defendants will not warrant taking jurisdiction over foreign defendants absent a strong connection between Ontario and the subject matter of the claim.

Lemmex v. Sunflight, supra at paras. 41-43.

90. In *Leufkens v. Alba Tours International Inc.*, the Court of Appeal for Ontario agreed with the motions judge that, in a case where the plaintiffs had sued multiple parties some of whom were resident in Ontario but most of whom resided in Costa Rica, the only effective way of proceeding would be to bring an action in Costa Rica given that the claim was essentially predicated on the negligence of Costa Rican defendants in Costa Rica, and all of the defendants were amenable to proceeding in that jurisdiction.

Leufkens v. Alba Tours, supra at paras. 30-32.

91. In this case, the core of the action lies in Barbados. The alleged tortious conduct occurred entirely in Barbados and the action centres on a claim for damages suffered in Barbados primarily as a result of the alleged conduct by the Barbadian defendants. While three of the Moving defendants reside outside of Barbados (in British Columbia, Alaska and the U.K.), the core of the action against them too lies in their alleged conduct in Barbados. As noted above, only five of the sixty-three defendants are located in Ontario, their involvement in the action is also minor (putting it at its highest), their alleged action also relates to what they did in Barbados, and some of them (Thornbrook and Turner) have made assignments in bankruptcy and therefore the action is

stayed against them.

92. Moreover, assuming jurisdiction in this case will itself lead to a multiplicity of proceedings given that an action is already pending in Barbados, which the Barbadian courts have declined to stay in favour of the Ontario proceedings, and there is a risk of inconsistent results as between the courts of Barbados and Ontario should the Ontario action proceed.

(vi) Willingness to Recognize and Enforce a Foreign Judgment Against an Ontario Resident Rendered on the Same Basis

93. In applying the jurisdictional analysis a court must also have regard to whether or not it would recognize a foreign judgment against a domestic defendant rendered on the same jurisdictional basis as the facts in the proceeding. Where the court would not enforce judgment against a domestic defendant, jurisdiction should not be assumed.

Muscutt v. Courcelles, surpa

94. In Muscutt the Court of Appeal for Ontario underscored the importance of not exercising jurisdiction too liberally stating: Every time a court assumes jurisdiction in favour of a domestic plaintiff, the court establishes a standard that will be used to force domestic defendants who are sued elsewhere to attorn to the jurisdiction of the foreign court or face enforcement of a default judgment against them. This principle is fundamental to the approach in Morguard and Hunt and may be seen as a self-imposed constraint inherent in the real and substantial connection test. It follows that where a court would not be willing to recognize and enforce an extra-provincial judgment rendered on the same jurisdictional basis, the court cannot assume jurisdiction, because the real and substantial connection test has not been met.

Muscutt v. Courcelles, supra at para. 93

95. This factor therefore weighs against finding jurisdiction simpliciter.

(vii) Whether the Case is Interprovincial or International in Nature

96. The Court of Appeal in *Muscutt*, as approved by the Supreme Court of Canada in *Beals*, has found that the assumption of jurisdiction is more difficult to justify in international cases than in interprovincial cases.

Muscutt v. Courcelles, supra at para. 95.

Beals v. Saldanha, supra

97. As the present case is clearly international, as opposed to interprovincial in nature, this factor clearly weighs in favour of declining jurisdiction.

(viii) Comity and the Standards of Jurisdiction, Recognition and Enforcement Prevailing Elsewhere

98. Comity requires an Ontario court to take care not to encroach on the judicial sovereignty of other nations. In cases involving international defendants, it is useful to consider the rules governing assumed jurisdiction and the recognition and enforcement of foreign judgments in the location in which the defendant is located.

Ioannides v. Calvalley, supra

Muscutt v. Courcelles, supra

99. Justice Gordon recently held that there are two elements to consider in

examining the standards of jurisdiction factor in *Research in Motion Limited v. Visto Corporation*. These elements are as follows:

1) whether a foreign court would assume jurisdiction if the facts were reversed; and

2) whether a judgment would be enforced by the foreign court.

Research in Motion Ltd. v. Visto Corporation, 2008 CarswellOnt 5510

100. There is no evidence that, in a similar circumstance, the Barbados court would assume jurisdiction over the Moving Defendants who were almost all from Ontario, being sued over matters that occurred in Ontario. In the absence of evidence to the contrary, there is no reason to expect the Barbadian rules are more generous than those prevailing elsewhere.

Leufkens v. Alba Tours, supra at para. 36.

101. This factor therefore also weighs against finding a real and substantial connection on the facts of the present case.

(ix) Summary on Jurisdiction Simpliciter

102. The Moving Defendants respectfully submit that a fair consideration of the eight factors set out above leads inevitably to the conclusion that jurisdiction simpliciter does not exist in this case. Although the Plaintiff is .resident. in Ontario (at least insofar as the address of the company is Mr. McKenzie's office in Orillia), this is perhaps the only thing that can be said with some certainty that would favour jurisdiction of Ontario. However, residency alone (and usually the Court's have a more substantial .residency. before them) is insufficient to create a real and substantial connection to Ontario. The issues in this action at

their core, and even at the edges involve Barbadians. The real and substantial connection test has not been met on any or all of the criteria and, in consequence, the assumption of jurisdiction by Ontario would contravene the principles of order and fairness underpinning the entire analysis.

C. Barbados is the Most Convenient Forum for this Action

103. In the alternative, if this Honourable Court determines that Ontario has jurisdiction simpliciter, the Moving Defendants submit that Ontario is not the convenient forum for hearing this action. This Honourable Court should therefore decline jurisdiction as there is clearly a more appropriate forum than Ontario for the pursuit of this action and securing the ends of justice, namely, Barbados.

Muscutt v. Coucelles, supra at para. 40

Amchem Products Inc. v. British Columbia (Workers Compensation Board), [1993] 1 S.C.R. 897 at pp. 931-932

104. The test for a stay of proceedings on the ground of forum non conveniens is whether there is some other forum which clearly exists as the more convenient and appropriate for the pursuit of the action and for securing the ends of justice. The choice of the appropriate forum is designed to ensure that the action is tried in the jurisdiction that has the strongest connection with the action and the parties.

Amchem Products Inc. v. British Columbia (Workers Compensation Board), supra at p. 921

Frymer v. Brettschneider, supra at 79

105. In *Muscutt v. Courcelles* the Court of Appeal set out seven, non-exhaustive factors, which guide the exercise of the Court's discretion in determining whether to assume jurisdiction in a proceeding. As is the case with the factors guiding the jurisdictional analysis, the test for forum non conveniens requires the factors to be weighed as a whole and is not meant to simply turn on which jurisdiction has the greatest number of factors.

Muscutt v. Courcelles, supra

106. The factors to be considered under the forum non conveniens test are as follows:

- (i) The location of the majority of the parties;
- (ii) The location of key witnesses and evidence;
- (iii) Any contractual provisions that specify applicable law or accord jurisdiction;
- (iv) The avoidance of a multiplicity of proceedings;
- (v) The applicable law and its weight in comparison to the factual questions to be decided;
- (vi) Geographical factors suggesting the natural forum; and
- (vii) Whether declining jurisdiction would deprive the Plaintiff of a legitimate juridical advantage available in the Ontario Court.

Muscutt v. Courcelles, supra at paras. 114-115.

107. Applying each of the forum non conveniens factors to the facts in this

matter, clearly demonstrate that Barbados, not Ontario, is the more convenient forum for this action.

(i) Location of the Parties

108. The Plaintiff is incorporated in Ontario with its registered office located in Orillia, Ontario, at the offices of the Plaintiff's lawyer. All other questions regarding the Plaintiff, its business, shareholders, officers or directors, were refused. As such it ought to be inferred that those answers would not assist the Plaintiff on this motion.

109. As is set out in the schedules, the vast majority of the Defendants are not resident in Ontario (only five of sixty-three) but are located in Barbados. All of the witnesses for those Barbadian defendants, and their documentary evidence, is located in Barbados.

(ii) Location of Witnesses and Evidence

110. The Moving Defendants have no witnesses located in Ontario and the Plaintiff will have few, if any, of its own witnesses from Ontario.

111. Moreover, the issues raised in this proceeding all relate to alleged misconduct occurring in Barbados in respect of Barbadian companies and Barbadian real property. The bulk, if not all, of the evidence will come from Barbados.

(iii) Contractual Provisions that Specify Applicable Law or Accord Jurisdiction

112. The only agreements in issue in this proceeding identified to date refer to Barbados law and, some contain jurisdiction and choice of law clauses

following Barbados.

(iv) Avoidance of Multiplicity of Proceedings

113. As noted above, several proceedings regarding the issues raised in the action have been brought in Barbados. The issues raised or decided in Barbados are substantially similar and arise out of the same facts and circumstances as the claims, to the extent that they are describable, in the Ontario proceeding.

(v) Applicable Law and Its Weight in Comparison to the Factual Questions to be Decided

114. The law to be applied to a tort is the *lex loci delicti*, or the law of the place where the activity occurred. It is clear that Barbados law applies in this case as that is the law of where the alleged wrongdoing occurred. The Plaintiff also alleges specific breaches of Barbados statutes and treaties.

115. Although an Ontario court could apply the law of Barbados, the foreign law would have to be proved through expert evidence, which is costly and inconvenient.

Holo-Deck Adventures Ltd. v. Orbotron Inc., [1996] O.J. No. 4417, at para. 18

116. The application and interpretation of Barbadian law should be a paramount consideration in declining jurisdiction.

Research In Motion Ltd. v. Visto Corporation, supra

Shell Canada Ltd. v. CIBC Mellon Trust Co. [2004] 4 W.W.R. 393(Alta.

Q.B.)

117. Further, there is no suggestion of any need to consider Canadian law in this action and therefore this factor weighs in favour of declining jurisdiction.

(vi) Geographic Factors Suggesting the Natural Forum

118. Barbados stands out at the natural forum in this dispute. All of the significant and material activities giving rise to the claims made by the Plaintiff occurred entirely in Barbados. The real estate in dispute is situated in Barbados.

(vii) Loss of a Legitimate Juridical Advantage

119. As Mr. Justice Sopinka states in *Amchem Products Inc.* at paragraph 55: [T]he loss of juridical or other advantage must be considered in the context of the other factors **A party can have no reasonable expectation of advantages available in a jurisdiction with which the party and the subject matter of the litigation [have] little or no connection.** (emphasis added)

***Amchem Products Inc. v. British Columbia (Workers Compensation Board)*, supra**

120. In *Cresbury Screen Entertainment Ltd. v. Canadian Imperial Bank of Commerce*, the British Columbia Superior Court noted that a token claim to the jurisdiction in question will negate any claim to the advantages of the selected jurisdiction. Here, the creation of an Ontario company to hold an interest in some shares in a Barbados corporation is, indeed, a “token claim” to jurisdiction.

Cresbury Screen Entertainment Ltd. v. Canadian Imperial Bank of

Commerce 2004 BCSC 349 at para. 41, aff.d 2006 CarswellBC 1311 (C.A.)

121. While loss of a juridical advantage is a factor to be considered within the forum non conveniens analysis, the Supreme Court in Amchem made clear that forum shopping was not to be condoned: [I]f a party seeks out a jurisdiction simply to gain a juridical advantage rather than by reason of a real and substantial connection of the case to the jurisdiction, that is ordinarily condemned as .forum shopping..

Amchem Products Inc. v. British Columbia (Workers. Compensation Board), supra

122. The Plaintiff (whoever it is) is doing just that in this case: it is forum shopping. During the Plaintiff's cross-examination of Veco Corporation's representative, Rene Massinon, the Plaintiff's counsel **Mr. McKenzie described himself as a "jurisdiction finder,"** which the Moving Defendants submit is akin to someone who shops for forums.

Mr. McKenzie stated: "Just for the record, I am not interested in the documents with respect to the merits of the case. I am interested in the centre of gravity and factors which are listed in there that go to how you would conduct a trial of this magnitude, which has all sorts of players in all sorts of jurisdictions, and round all the documents up that are relevant and get them in one place. That is and among the other reasons of Justice Shaughnessy why I am interested in them. I am not interested in the merits of the case. As a matter of fact, I'll save my comments about the merits of the case for another time, but I'm saying that's not what I'm worried about right now. I'm specifically trying to say as a trial lawyer and a jurisdiction finder, where would the best place be for the trial given juridical advantage, given all of the witnesses.

Massinon Cross-Examination at pp. 132-133, In. 16-27 and 1-4

123. In the present case, the Plaintiff's claim of jurisdiction of the Ontario Courts rests predominantly on its own residence in the province. Given that most of the parties to this action are located Barbados and the allegations in the Amended Statement of Claim centre on conduct alleged to have occurred in Barbados, the Plaintiff can have no reasonable expectation that it is entitled to the advantages of the Ontario civil justice system.

124. Further, as set out above, the Plaintiff's allegations criticizing the Barbados justice system are unfounded, indeed scandalous. Suggestions of delays and court backlogs may apply equally to Ontario and have a familiar ring. No credible or factual evidence has been put forward on this issue. The complaint relating to facilities and lack of court reporters is disingenuous, especially in light of the knowledge of John Knox of the opening in early 2009 of a state of the art courthouse that will be far more modern than exists in many locations in Ontario. The lack of oral discovery in Barbados makes it no different from England, and no tenable case can be made that one is at a juridical disadvantage by being required to sue in England rather than Ontario. As the Chief Justice noted in cross examination (pages 81 -83, 88-89), Barbados follows English rules of procedure and is adopting the Lord Woolf reforms introduced in England in 1999. Indeed, it is ironic that Knox complains, in that regard, about the abolition of appeals to the Privy Council, although he makes no assertion that the new Caribbean Court of Justice is in any way inadequate or unqualified (which would be similar to attacking the Supreme Court of Canada in the 1950s after appeals to the Privy Council from Canada were abolished). Rather, Knox simply notes, correctly but with a nasty innuendo, that Sir David Simmons spearheaded the creation of the Court. As the Chief Justice noted, he is not a member of that Court and has no current connection to it.

Knox Affidavit, para. 74

Sir David Simmons, cross-examination, pp. 130-133

125. For all of the reasons set out above, the Moving Defendants submit that Barbados is clearly the most appropriate and natural forum for the Plaintiff's claim. Since the Plaintiff chose to become involved in the business affairs of Barbadian companies and individuals, it is appropriate and fair that it should also be required to litigate its claim in that jurisdiction.

PART IV . ORDER REQUESTED

126. The Moving Defendants therefore respectfully request an order:

- (a) Setting aside service on the grounds that the originating process was not properly served outside of Ontario in accordance with Rules 17.02 and 17.04(1) of the Rules of Civil Procedure;
- (b) Declaring that Ontario does not have jurisdiction for the action against the Moving Defendants;
- (c) In the alternative, declaring that Ontario is not a convenient forum for hearing the action with Court File No. 07-0141; and
- (d) Dismissing the Action, with costs.

127. With respect to costs, the Moving Defendants seek them on a substantial indemnity basis, and request the opportunity to make further submissions respecting an order directing that the costs be payable by the directors and/or shareholders of the Plaintiff or by the Plaintiff's solicitor, Mr. McKenzie, and whether the award of costs should be secured against whatever interest the

plaintiff has in the Kingsland shares lodged in Canada.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of December,

SCHEDULE .A.

AUTHORITIES

Tab

1. Muscutt v. Courcelles (2002), 60 O.R. (3d) 20 (C.A.)
2. Canadian International Marketing Distributing Ltd. v. Nitsuko Ltd. (1990), 56 B.C.L.R. (2d) 130 (C.A.)
3. Jordan v. Schatz (2000), 77 B.C.L.R. (3d) 134 (C.A.)
4. Lemmex v. Sunflight Holidays Inc. (2002), 60 O.R. (3d) 54 (C.A.)
5. Plant Technology International Inc. v. Peter Kiewit Son Co., [2002] O.J. No. 2305 (S.C.J.)
6. Frymer v. Brettschneider (1994), 19 O.R. (3d) 60 (C.A.)
7. M.J. Jones Inc. v. Kingsway General Insurance Co., [2003] O.J. No. 4409 (S.C.J.) at para 27, aff.d [2004] O.J. No. 1087 (C.A.)
8. Children's Aid Society for Huron & Perth v. H.(C)., [2008] W.D.F.L. 3415

9. Mapletoft v. Service, [2008] O.J. No. 693
10. Morguard Investments Ltd. v. De Savoye (1990), 76 D.L.R. (4th) 256 (SCC)
11. Beals v. Saldanha, [2003] S.C.J. No. 77, [2003] 3 S.C.R. 416
12. Hunt v. TLN plc, [1993] 4 S.C.R. 289
13. Sinclair v. Cracker Barrel Old Country Store Inc. (2002), 60 O.R. (3d) 76 (C.A.)
14. Leufkens v. Alba Tours International Inc. (2002), 60 O.R. (3d) 84 (C.A.)
15. Gajraj v. DeBernardo (2002), 60 O.R. (3d) 68 (C.A.)
16. Ioannides v. Calvalley Petroleum Inc. 2006 CarswellOnt 4581 (S.C.J.)
17. ECS Educational Consulting Services Canada Ltd. v. Al Nahyan [2000] O.J. No. 211 26-27 (S.C.J.)
18. M.J. Jones Inc. v. Kingsway General Insurance Co., [2003] O.J. No. 4409 (S.C.J.)
19. Research in Motion Ltd. v. Visto Corporation, 2008 CarswellOnt 5510
20. Amchem Products Inc. v. British Columbia (Workers Compensation Board), [1993] 1 S.C.R. 897
21. Holo-Deck Adventures Ltd. v. Orbotron Inc., [1996] O.J. No. 4417
22. Shell Canada Ltd. v. CIBC Mellon Trust Co. [2004] 4 W.W.R. 393

23. *Cresbury Screen Entertainment Ltd. v. Canadian Imperial Bank of Commerce* 2004 BCSC 349 at para. 41, aff.d 2006 CarswellBC 1311 (C.A.)

Schedule A-1

First Caribbean International Bank (.FCIB.)

1. The Defendant FCIB is named in the Amended Statement of Claim, but other than a passing reference to it in the Claim, no allegations are specifically made against FCIB. There are two references to FCIB in Affidavits filed by the plaintiff in response to the Moving Defendants. motions, including that FCIB provided a credit facility to Classic in 2005, and that FCIB renamed an account belonging to Marjorie Knox, at some point in 2002.

2. FCIB has provided evidence that the credit facility with Classic was entered into, in Barbados, for valid consideration and in an arms length commercial transaction. The credit facility has since been discharged, and FCIB no longer has any banking arrangements with Classic. Affidavit of Mark Young, sworn June 25, 2007, (the .Young Affidavit.), para 12

3. FCIB did accidentally rename a personal account of Marjorie Knox, in or about 2002, but that related to the merging of two local banks to form FCIB, and was a simple transition error. The error was corrected as soon as it was brought to the bank's attention. In any case, no harm or prejudice has been alleged in respect of the error. Affidavit of Mark Young, sworn January 11, 2008, (the .Second Young

Affidavit.)

4. Following are the factors in respect of jurisdiction relating to the defendant FCIB, which all indicate that Ontario has no connection to the claim against

FCIB and that Barbados is in any case the most convenient forum:

(i) FCIB is a chartered bank situated in the Caribbean with its head office in Barbados; Young Affidavit, para 6

(ii) FCIB carries on no business in Ontario, and has no assets in Ontario; Young Affidavit, para 8

(iii) FCIB has never attorned to the jurisdiction of the Ontario Court; Young Affidavit, para 26

(iv) Although one of its indirect shareholders is a Canadian chartered bank (Canadian Imperial Bank of Commerce), as an indirect shareholder it has no involvement in or control over FCIB, or its lending decisions, including the transactions concerning any of the defendants, and has no documents or other materials or information relating to FCIB in Canada; Young Cross Examination, Q 27, page 6-7

(v) The only credit facilities in question, between FCIB and another Barbadian defendant, were entered into in Barbados, secured by Barbadian assets and real estate, were in respect of Barbadian currency, and were discharged before this litigation began, in 2007; Young Affidavit, paras 18-20

(vi) The credit facilities contain choice of law and choice of jurisdiction provisions which stipulate that the law of Barbados, and the Court of Barbados, apply; Young Affidavit, paras 26-29

(vii) All documents, electronic evidence and witnesses of FCIB are located in the Caribbean; and Young Affidavit, para 3, 10 & 25 Young Cross Examination

(viii) No allegation has been made of any connection between FCIB and

Ontario.

SCHEDULE A-2

PARTIES REPRESENTED BY CASSELS BROCK & BLACKWELL LLP

Following hereunder are the factors (upon which there was no cross-examination) in respect of jurisdiction relating to each of the defendants represented by Cassels Brock:

(i) Classic Investments Limited is a Barbados incorporated and registered company with its head office in Barbados. It carries on no business in Ontario and has no assets in Ontario. Classic has never attorned to the jurisdiction of the Ontario Court. All documents, electronic evidence and witnesses of Classic are located in Barbados. There is no allegation of any connection between Classic and Ontario or the SBG transaction;

(ii) Richard Ivan Cox, Gerard Cox and Alan Cox . are directors of Classic and since December 2005, have also been directors of Kingsland. All of them reside in Barbados. None of them have any business in Ontario or assets in Ontario. None of them have ever attorned to the jurisdiction of the Ontario Court. There is no allegation made of any connection between Richard Ivan Cox, Gerard Cox and Alan Cox and Ontario or the SBG transaction;

(iii) Gittens Clyde Turney is one Her Majesty's counsel for Barbados who resides in Barbados. Turney carries on no business in Ontario and has no assets in Ontario. Turney has never attorned to the jurisdiction of the Ontario Court. All documents, electronic evidence and witnesses of Turney are located in Barbados. There is no allegation made of any

connection between Turney and Ontario or the SBG transaction;

(iv) R.G. Mandeville & Co. . is a law firm in Barbados with its only office located in Bridgetown, Barbados. The law firm carries on no business in Ontario and has no assets in Ontario. R.G. Mandeville & Co. has never attorned to the jurisdiction of the Ontario Court. Its documents, electronic evidence and witnesses are located in Barbados. There is no allegation made of any connection between R.G. Mandeville & Co. and Ontario or the SBG transaction;

(v) Keble Worrell Ltd. . is a Barbados incorporated and registered company of which Turney is a director and the sole shareholder. Keble Worrell carries on no business in Ontario and has no assets in Ontario. It has never attorned to the jurisdiction of the Ontario Court. Its documents, electronic evidence and witnesses are located in Barbados. There is no allegation made of any connection between Keble Worrell and Ontario or the SBG transaction;

(vi) Lionel Nurse . is a permanent secretary in the civil service of Barbados. He is a resident of Barbados. Lionel Nurse carries on no business in Ontario and has no assets in Ontario. He has never attorned to the jurisdiction of the Ontario Court. All of Nurse's documents, electronic evidence and witnesses are located in Barbados. There is no allegation made of any connection between Lionel Nurse and Ontario or the SBG transaction;

(vii) The Right Honourable Owen Seymour Arthur, M.P. . is the former Prime Minister of Barbados and a resident in Barbados. He carries on no business in Ontario and has no assets in Ontario. The Right Honourable Owen Seymour Arthur, M.P. has never attorned to the jurisdiction of the Ontario Court. His documents, electronic evidence and witnesses are located in Barbados. There has been no allegation made of any connection between the Right Honourable Owen Seymour Arthur, M.P. and Ontario or the SBG transaction;

(viii) Mark Cummins . is the Chief Town Planner of Barbados and resides in

Barbados. Cummins carries on no business in Ontario and has no assets in Ontario. He has never attorned to the jurisdiction of the Ontario Court. All documents, electronic evidence and witnesses of Cummins are located in Barbados. There is no allegation made of any connection between Cummins and Ontario or the SBG transaction;

(ix) Kingsland Estates Limited . is a Barbados incorporated and registered company. It was a family company whose only shareholders, up to the time of its takeover by Classic, were members of the Deane family. It was incorporated and registered in Barbados in 1958. It was taken over by Classic in December 2005. It owns land, only in Barbados. It has no property or assets in Canada nor any dealings of any kind in this jurisdiction. Kingsland has never attorned to the jurisdiction of the Ontario Court. All of its documents, electronic evidence and witnesses are located in Barbados. There is no allegation made of any connection between Kingsland and Ontario;

(x) The Barbados Agricultural Credit Trust (more properly .Barbados Agricultural Credit Trust Limited.) . is a Barbados incorporated and registered company, which is wholly owned by the government of Barbados. It is principally involved in the sugar industry in Barbados. It has no business in Ontario and has no assets in Ontario. It has never attorned to the jurisdiction of the Ontario Court. All of its documents, electronic evidence and witnesses are located in Barbados. There is no allegation made of any connection between the Barbados Agricultural Credit Trust Limited and Ontario;

(xi) The Attorney General of Barbados . is the holder of the constitutional office of Attorney General under the Constitution of Barbados. It has no business dealings or assets in Ontario. It has never attorned to the jurisdiction of Ontario. All of its documents, electronic evidence and witnesses are located in Ontario. There is no allegation made of any connection between the Attorney General of Barbados and Ontario;

(xii) The Honourable Elneth Kentish . is a High Court Judge in Barbados and formerly a partner of R.G. Mandeville & Co., a director of both Kingsland and Keble Worrell Ltd. and a resident in Barbados. The Honourable Elneth Kentish has no business in Ontario and has no assets in Ontario. She has never attorned to the jurisdiction of the Ontario Court. All of her documents, electronic evidence and witnesses are located in Barbados. There is no allegation made of any connection between the Honourable Elneth Kentish and Ontario;

(xiii) Malcolm Deane . is an attorney-at-law in Barbados and a partner of R.G. Mandeville & Co. He is a resident in Barbados. He has no business in Ontario and has no assets in Ontario. Malcolm Deane has never attorned to the jurisdiction of the Ontario Court. All documents, electronic evidence and witnesses of Malcolm Deane are located in Barbados. There is no allegation made of any connection between Malcolm Deane and Ontario;

(xiv) Eric Ashby Bentham Deane (.Eric Deane.) . was formerly a shareholder and chairman of Kingsland and is now its secretary. He is a resident in Barbados. He carries on no business in Ontario and has no assets in Ontario. He has never attorned to the jurisdiction of the Ontario Court. All documents, electronic evidence and witnesses of Eric Deane are located in Barbados. There is no allegation made of any connection between Eric Deane and Ontario;

(xv) Owen Basil Keith Deane (.Keith Deane.) . was formerly a shareholder, director and secretary of Kingsland. He is a resident in Barbados. He carries on no business in Ontario and has no assets in Ontario. Keith Deane has never attorned to the jurisdiction of the Ontario Court. All documents, electronic evidence and witnesses of Keith Deane are located in Barbados. There is no allegation made of any connection between Keith Deane and Ontario;

Affidavit of Clyde Turney, sworn May 21, 2007

Motion Record filed by Cassels Brock, pgs. 29 . 34

(xvi) The Estate of Vivian Gordon Lee Deane . Vivian Gordon Lee Deane was a resident of Barbados up to the time of his death. His Estate is administered by its Executrix, Lynette Rachel Deane, who resides in Barbados. All of the assets and undertakings of the Estate of Vivian Gordon Lee Deane are situate in Barbados. The Estate has never attorned to the jurisdiction of the Barbados Court. The Estate's documents, electronic evidence and witnesses are all located in Barbados. There is no allegation made of any connection between the Estate and Ontario;

(xvii) The Honourable David John H. Thompson . is the current Prime Minister of Barbados. He is a resident in Barbados and has never had any business dealings in or connection with Ontario. The Honourable David John H. Thompson has never attorned to the jurisdiction of the Ontario Court. All of his documents, electronic evidence and witnesses are located in Ontario. There is no allegation made of any connection between the Honourable David John H. Thompson and Ontario;

(xviii) Owen Gordon Finlay Deane was formerly a director and shareholder of Kingsland and is a resident in Barbados. He has no business in Ontario and has no assets in Ontario. He has never attorned to the jurisdiction of the Ontario Court. All documents, electronic evidence and witnesses of Owen Gordon Finlay Deane are located in Barbados. There is no allegation made of any connection between Owen Gordon Finlay Deane and Ontario;

(xix) Life of Barbados Holdings . is a joint venture of two other Barbadian companies. The joint venture was registered on 1 April, 1996 and its principals are Classic Investments Limited, Richard I. Cox (both defendants in this action), Steven L. Emtag and Life of Barbados Limited;

(xx) Leonard Nurse . is a resident of Barbados and was formerly head of the Coastal Zone Management Unit of the Ministry of the Environment. He is presently the director of the Centre for Resource Management and Environmental Studies at the University of West Indies, Cave Hill Campus. He has no assets in Ontario and has no business in Ontario. He has never attorned to the jurisdiction of the Ontario Court. All documents, electronic evidence and witnesses of Leonard Nurse are located in Barbados. There is no allegation made of any connection between Leonard Nurse and Ontario;

Affidavit of Clyde Turney, sworn November 6, 2007Supplementary Motion Record filed by Cassels, Brock, pgs. 8 - 10

SCHEDULE A-3

PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM

(“PwC East Caribbean”)

A. The Uncontradicted Evidence of Marcus A. Hatch

1. PwC East Caribbean is a partnership duly constituted and subsisting under the laws of Barbados. PwC East Caribbean is engaged in the practice of, amongst other things, chartered accountancy in the Caribbean. It carries on business, and only carries on business, in specific territories in the Caribbean.

2. Kingsland Estates Limited (.Kingsland.) is a Barbadian corporation which only carries on business in Barbados. Kingsland engaged the Barbados office of PwC East Caribbean to audit Kingsland’s financial statements for the years ended June 30, 1998 to June 30, 2005 by letter dated October 1, 2005 (the “Engagement Letter”).

3. All of the work in connection with the audit was conducted in Barbados. All of the audit files are in Barbados. All of the audit staff (Philip Atkinson, Steven Sayers and Bernadette Austin) live in Barbados.

4. PwC East Caribbean does not, and has not, carried on business in Ontario at any time. It did not perform any work, or attend any meetings, in Ontario in connection with the audit.

5. PwC East Caribbean never submitted to the jurisdiction of the Ontario courts, nor did it agree that any issues would be governed by, or be interpreted in accordance with, the laws of the Province of Ontario. In fact, the Engagement Letter specifically provides that the engagement shall be governed by the laws of Barbados and the parties (PwC East Caribbean and Kingsland) agreed to the exclusive jurisdiction of the courts of Barbados with respect to all matters arising in relation to the audit engagement.

B. The Unsubstantiated Allegations of John Knox

6. In his affidavit sworn November 12, 2007 John Knox (.Knox.) makes vague allegations concerning PwC East Caribbean which are wholly unsubstantiated.

7. Knox swore his affidavit on November 12, 2007, approximately six (6) months after Marcus Hatch, then Managing Partner of the Barbados office of PwC East Caribbean, swore his affidavit on May 18, 2007. Although Knox had some six months to prepare his affidavit, Knox was unable to contradict (or even challenge) the evidence of Mr. Hatch. The Knox affidavit (paragraph 135) merely sets forth Knox's belief, which has no basis in fact. We deal with the allegations in paragraph 135 of the Knox affidavit below.

(a) Allegation #1: PwC East Caribbean .is a unit of Pricewaterhouse International that is headquartered in New York City.

- Knox alleges that PwC East Caribbean is a unit of some entity known as “Pricewaterhouse International”. On cross-examination, he agreed that he had no evidence to substantiate the allegation. It is nothing more than his belief. Cross-examination of Knox, page 192, Q. 772-774
- The only evidence Knox tendered to support his belief was the fact that his sister, Kathleen Davis, had apparently written a letter to “PricewaterhouseCoopers International” in New York. Knox did not know the date of the alleged letter; the name of the individual to whom the letter was sent; or the date or author of individual who may have responded on the part of “PricewaterhouseCoopers International”. Knox also failed to bring the letters to his cross-examination. Cross-examination of Knox, page 193, Q. 778-788
- Even assuming Ms. Davis wrote a letter to “PricewaterhouseCoopers International” in New York, the letter is self-serving and proves nothing.
- Any such letter does not contradict the evidence, on oath, of Mr. Hatch that PwC East Caribbean is a distinct legal entity, being a partnership duly constituted and subsisting under the laws of Barbados.

(b) Allegation #2: A Vague Comment that “Audit Standards, Protocols and Overriding Considerations”. will be located in the State of New York

§ As above, this statement (whatever it means) is merely a statement of Knox’s “belief”. Cross-examination of Knox, page 205, Q. 843-845

§ However, contrary to Knox’s “belief”, no PwC entity (either in the U.S. or elsewhere) promulgated the auditing standards which governed the Kingsland audit conducted by PwC East Caribbean. Rather, the Kingsland audit was performed in accordance with International Standards on Auditing. These standards, as Mr. Hatch made clear on cross-examination, were promulgated by the pre-eminent international accounting body known as the International Federation of Accountants. Cross-examination of Hatch, pages 22-3, Q. 55-63

§ Accordingly, the standards are international standards and not standards unique or proprietary to PwC. Further, and in any event, even if Knox were correct, which is denied, audit standards in the State of New York do not provide any connection to the Province of Ontario.

(c) Allegation #3: Knox's Expectation that "Representatives of PwC East Caribbean Receive Their Training at least in part Outside of Barbados".

- As above, this statement by Knox has no basis in fact.
- When cross-examined, Knox admitted that he had no evidence that any of the audit staff (Philip Atkinson, Steven Sayers or Bernadette Austin) ever received training in either Canada or the United States.

851. Q. Do you have any evidence that Mr.

Atkinson ever took any training in either Canada or

the United States, Sir?

A. No, I don't.

852. Q. Do you have any evidence that Mr.

Sayers ever took any training in either Canada or the

United States, Sir?

A. No, I don't.

853. Q. Do you have any evidence that Ms.

Bernadette Austin ever took any training in either

Canada or the United States?

A. No, I don't.

§ The only evidence of any connection to Canada is a self-serving statement which Knox claims was made by Steven Sayers (of PwC East Caribbean) at the Annual General Meeting of Kingsland in July or August of 2008 to the effect that Philip Atkinson had been in touch with Canada in relation to the preparation of either the 2006 or 2007 Kingsland financial statements. Cross-examination of Knox, page 194-95, Q. 791-2 and page 206, Q. 849-50

§ Knox best evidence was that Mr. Atkinson contacted someone in Canada on "one issue". Knox could not identify the issue, or give evidence of who Mr. Atkinson allegedly contacted or the date of the contact. Further, Knox never saw fit to ask Mr. Atkinson if he had actually made inquiries of any PwC representative in Canada. Cross-examination of Knox, page 209-10, Q. 862-868

§ The wholly unsatisfactory, and unsubstantiated, factual basis for Knox's allegation is best summarized in his answer at question 861 of his cross-examination.

THE DEPONENT: I don't know where in Canada he was talking to. I just know.....I just remember.....I seem to recall.....I am pretty sure that Steven Sayers said that he had been in touch with Canada.

- Notably, the evidence of Mr. Atkinson's alleged contact with Canada only arose in the course of Knox's cross-examination. Knox never saw fit to put

his evidence before this Honourable Court in affidavit form.

C. Knox Accepts the Evidence of Marcus Hatch

- In spite of repeated attempts by Mr. McKenzie to object to the question, Knox (after reading the affidavit of Mr. Hatch twice) ultimately answered the question whether he had any evidence to contradict the evidence of Mr. Hatch. Knox agreed that he had no evidence to contradict Mr. Hatch.

893. Q. Do you have any evidence, sir, to

contradict the evidence that is set forth in paragraphs

1 through 18 of Mr. Hatch's affidavit?

A. So in other words, the whole affidavit?

894. Q. Yes.

A. I would have to review all of my files again but I don't think I have evidence that would contradict, but I would have to go back to my files again.

895. Q. But today, sir, you have no evidence to contradict what it is Mr. Hatch has said under oath. Isn't that fair?

A. Today, I have no evidence.

SCHEDULE A-4

PARTIES REPRESENTED BY BLAKE, CASSELS & GRAYDON LLP

S.B.G. Development Corporation

S.B.G. was incorporated pursuant to the laws of Barbados. It was registered on May 31, 1990 by its solicitor, David Simmons. The certificate of incorporation is dated March 7, 1991. The incorporating directors were Peter and David Simmons. David Simmons resigned as a director on September 7, 1994, by letter registered on that date, although a notice of change of directors was not filed until August 2007, after this litigation stated. (Exhibits 1-3, 7, 8, 10 and 13 to cross-examinations of Sir David Simmons)

“S.B.G.” is derived from the names of Peter Simmons, Glyne Bannister and Philip Greaves, and was formed in 1990 to acquire the shares of Kingsland Estates Limited and develop a golf course on the property. There was an expectation that funding would come through Brian Turner and Graham Brown, both then located in Toronto, but who met with the S.B.G. participants in Barbados. All meetings of S.B.G., and all of its activities relating to the proposal to acquire the shares in Kingsland Estates Limited, occurred in Barbados. Any meetings with Brown and Turner occurred in Barbados, and any funds they were to provide were expected to come from Europe . Cyprus or London. (Philip Greaves, Affidavit, paras. 6-7; cross-examination, pp. 6- 9, 61; Peter Simmons, Affidavit, paras. 6-8; cross-examination, pp. 14-23, 108; Glyne Bannister, re-examination, pp. 66-67)

An offer to purchase was presented to Kingsland Estates Limited, dated June 1, 1990 (Exhibit 10 to the cross of Sir David Simmons), and a deposit of about US\$200,000 (\$400,000 Barbados dollars) was provided. The funds were provided by Turner and Brown, and would have been sent to Cottle, Catford (a Barbados law firm and a defendant in this matter), solicitors for Kingsland. Although the offer was accepted, the transaction did not close, and the deposit was forfeited to Kingsland. By 1994, when David Simmons was elected Attorney General and terminated his private practice, and Peter Simmons was

appointed High Commissioner to the United Kingdom and moved to London, the S.B.G. proposal was finished and no further steps were ever taken by the company, which has been dormant ever since. (Greaves, Affidavit, para. 6;., Peter Simmons, cross-examination, pp. 23-24, 33, 47-52; Sir David Simmons, cross-examination,

pp.144-152, 345, 350-352, 360-351)

Sir David Simmons

Sir David Simmons is the Chief Justice and President of the Court of Appeal of Barbados, appointed 1 January 2002. Previously, from 1994 to 2001, he was the Attorney General, and before that practiced law from 1970 to 1994. (Affidavit, paras 2 and 4). He has no assets, business, family (other than a niece) or personal connections to Ontario. (Affidavit, para. 5, cross-examination, page 32) With the exception of ten years between 1960 and 1970, when he studied and taught law in England, has always lived and worked in Barbados. (Affidavit, para. 3) In 1991, as a solicitor acting for Philip Greaves, Peter Simmons and Glyne Bannister, he incorporated SBG Development Corporation. He became one of two directors of SBG, and remained a director until resigning on September 7, 1994, when he became Attorney General, in accordance with guidelines of proper behaviour of Cabinet Ministers, and has had nothing to do with SBG since that date. His knowledge of issues in this case come from his role as solicitor to Peter Simmons, Greaves and Bannister. (Affidavit, paras. 6 . 8; letter of resignation dated September 7, 1994, obtained from the Registrar of Corporate Affairs and Intellectual Property, Exhibit 1 on cross-examination of Sir David Simmons; cross-examination, pp. 47 - 56) As he put it on cross-examination:

“A deposit was paid and a deposit was lost. S.B.G. lost \$400,000. That was the end of it. They paid a deposit. When the time came for completion of the

contract for the purchase of shares, they could not come up with the money. That was it. And every one of us, I mean that I can speak for, Philip Greaves, my brother and I, walked away from it, Mr. McKenzie. I had nothing more to do with S.B.G., Kingsland or any of these people in this lawsuit since 1994. And you have joined me. I had nothing more to do with it.. (Cross, p. 144 - 147)”

Peter Simmons

Peter Simmons is former High Commissioner of Barbados to the United Kingdom. With the exception of study abroad in the United States, England and Trinidad, and his diplomatic appointments in New York and London, England, he has lived all his life in Barbados. (Affidavit, paras. 1 . 4) He has no assets, business or family connections with Ontario, but has visited it on vacation in 1967, 1985 and 1987. (Affidavit, para. 5) In 1990, Peter Simmons, Philip Greaves and Glyne Bannister instructed their solicitor, David Simmons, to incorporate a company, SBG, for the purpose of bidding for the shares of Kingsland with a view to developing some of its land as a golf course. All of his activities and dealings on this matter occurred in Barbados. When he left for England in January 1995, .as far as I was concerned, S.B.G. was dead and buried., and .that was the end of S.B.G., as far as I recall.. (Affidavit, paras. 6 . 7, cross-examination at pp. 14 . 24, 33, 35)

Philip Greaves

Philip Greaves is a Barrister and Queen’s Counsel. He served as a Minister in the Government of Barbados from 1965 to 1976, and from 1986 to 1994, serving as Deputy Prime Minister from 1987 to 1994. (Affidavit, paras. 2 and 4) Aside from education in St. Vincent and England, he has resided in Barbados all his life. (Affidavit, paras. 2 . 3) He has no business interests or business relationships with any companies that do business in Canada, although he has visited Canada several times, on government trips, vacations, and to visit

relatives. (Affidavit, para. 5) In about 1991, he, Bannister and Peter Simmons instructed David Simmons to incorporate SBG which, it was contemplated, would develop a golf project on Kingsland lands. The project did not materialize, no shares were issued in Kingsland, it never functioned as a company, and has been in a state of dormancy. since then. All dealings occurred in Barbados. (Affidavit, paras. 6 -7)

David Shorey and David C. Shorey and Co., Chartered Accountants

David Shorey is a chartered accountant and management consultant, and has carried on business under the name David C. Shorey and Co., Chartered Accountants, since 1987. (Affidavit, para. 3) Aside from ten years studying and working in England in the 1960s and 1070s, David Shorey has always lived and worked in Barbados. (Affidavit, para. 2) He does not carry on business in Ontario. Although he has visited Canada many times, this was usually on business when he was employed by Barbados Light and Power from 1973 to 1981, which was wholly owned by Canadian International Power Company, or when he was chairman of Hotels and Resorts Limited. He has not been to Canada since 1999. (Affidavit, para. 5, cross-examination, p. 14) In 1992 or 1993, he was asked by Peter Simmons to do a feasibility study in connection with a proposal to build a golf course on lands owned by Kingsland Estates Limited. Shorey did this work in Barbados. Several years later, in 1997 and 1998, Shorey entered into separate transactions with Richard Cox to purchase shares in Kingsland. This took place entirely in Barbados, and was separate from and long after. the earlier work for Peter Simmons. (Affidavit, para. 7, and cross at pp. 20 . 24, clarifying para. 7 of the Affidavit; and pp. 26-31) Shorey never formalized his arrangements with Cox and never became a shareholder of Classic, or Kingsland. (cross, p. 27)

SCHEDULE A-5

GLYNE BANNISTER

Overview

1. Several years ago, Glyne Bannister, who has been a resident of Barbados since 1992, attempted to consummate a deal to build a golf course and recreational facility in Barbados. The Plaintiff's claim, to the extent that it can be determined, appears to relate to this. Mr. Bannister

2. Mr. Banister's name appears once, at paragraph 8, in the amended statement of claim and only for the purposes of identifying him as a businessman. Motion Record of Glyne Bannister, p. 21 (Exhibit .A. to the affidavit of Glyne Bannister sworn November 8, 2007, amended statement of claim, p. 10, para. 8).

3. He is a permanent resident of Barbados, having moved there from Toronto in November, 1992, and works in the developing world on corporate and structural development as well as project implementation. Motion Record of Glyne Bannister, p. 9 (affidavit of Glyne Bannister sworn November 8, 2007, p. 2, para. 3). Cross-examination of Glyne Bannister, October 31, 2008, p. 5, qq. 3-5. The attempt in the early 1990s to develop Barbadian land

4. In the early 1990s, Mr. Bannister was involved, with others, in trying to develop Barbadian lands into a golf course and recreational facility. Cross-examination of Glyne Bannister, October 31, 2008, p. 18, qq. 63 67.

5. He was responsible for putting together the land for the project and making the necessary applications for its change of use. Cross-examination of Glyne Bannister, October 31, 2008, p. 42, qq. 151-152.

6. These applications were to be made through GBI Golf (Barbados) Inc. (.Golf

Barbados.), a corporation which was going to be a vehicle for the project and which is, by the Plaintiff's own admission, a Barbadian entity. Cross-examination of Glyne Bannister, October 31, 2008, pp. 19-20, q. 71; pp. 30-31, qq. 101-105. Motion Record of Glyne Bannister, p. 21 (Exhibit .A. to the affidavit of Glyne Bannister sworn November 8, 2007, amended statement of claim, p. 4, para. 40).

7. The Barbadian land in question consisted of 2300 acres. It was intended that this land be acquired from multiple owners: Kingsland Estates, whose property represented 1067 acres of the total; Ridge Estates (.Ridge.), a Barbadian entity which was owned by Barbados Shipping & Trading (another Barbadian entity); and Staplegrove Estates (.Staplegrove.), also Barbadian. Cross-examination of Glyne Bannister, October 31, 2008, p. 18, qq. 63- 67; 39-40, qq. 143-145; pp. 65-66, qq. 237-240.

8. The people who represented Ridge and Staplegrove in their dealings with Mr. Bannister, lived in Barbados, as does the lawyer who acted for Golf Barbados at the time, Dr. Trevor Carmichael. Cross-examination of Glyne Bannister, October 31, 2008 ,pp. 40-41, q. 147; p. 45, q. 16; p. 66, qq. 240-243.

9. The meetings with respect to the project took place in Barbados, and the proposed financing for it was coming through Cyprus and London, not Ontario. Cross-examination of Glyne Bannister, October 31, 2008, p. 47-41, qq.171-172; pp 66-67, q 245. Cross-examination of Peter Simmons, October 28, 2008, pp 14-15, qq. 30-38.

10. The project was abandoned some time in 1994 because the proposed financing could not be arranged, a sizable deposit being forfeited to the benefit of Kingsland Estate. Cross-examination of the Chief Justice of Barbados, October 28, 2008, pp. 146-147, q. 541, and October 29, 2008, p. 360, q. 126. Document, parties and witnesses

11. Mr. Banister's documents relating to the project are at his residence in Barbados.

Cross-examination Glyne Bannister, October 31, 2008: pp. 32-36; qq. 114-128.

12. He is a permanent resident of Barbados and, as set out in the body of this factum, the overwhelming majority of parties and witnesses are located in Barbados. Mr. Bannister does not know where Graham Brown (who was going to be responsible for golfcourse design) and Brian Turner (who was in charge of arranging the financing) currently live. In the early 1990s, they appear to have lived in the Toronto area. Motion Record of Glyne Bannister, pp.9-10 (affidavit of Glyne Bannister sworn November 8, 2007, pp. 2-3, para 6(d), 6(e) and 6(f)). Cross-examination Glyne Bannister, October 31, 2008, p. 2, para. 3; p. 28, q. 136; pp. 57-62, 202- 223.

SCHEDULE A-6

VECO CORPORATION

1. Veco Corporation is an Alaskan, United States corporation with its head (and only) office located in Anchorage. Veco Corporation does not carry out any business in Ontario. It has no operations, offices, facilities, employees, assets or property located in Ontario. (Affidavit of René Massinon, sworn October 4, 2007. (the .Massinon Affidavit.) at paragraphs 11-12; Massinon cross-examination at p. 6, ln. 17-26 and at p. 7, ln. 2 (the .Massinon Cross.); and the Plaintiff's Amended Statement of Claim at paragraph 27)

2. Aside from naming Veco Corporation as a Defendant, the Plaintiff's Amended Statement of Claim does not specifically refer to Veco Corporation or make any allegations whatsoever against Veco Corporation. Further, there is no allegation of any connection between Veco Corporation and Ontario in

relation to the Plaintiff's Amended Statement of Claim.

3. Veco Corporation has not taken any steps that could be construed as an acceptance of, or as a submission or attornment to, the jurisdiction of the Ontario Courts with respect to the Plaintiff's Amended Statement of Claim. (Massinon Affidavit at paragraph 16)

4. The cross-examination of Mr. Massinon on his affidavit demonstrates that Veco Corporation has no real and substantial connection to Ontario:

(a) Massinon has .no doubt. that there are no Veco Corporation records in Ontario. No documents from any Veco entity are in Ontario (p. 51, ln. 3-13; p. 75, ln. 12);

(b) Prior to September 7, 2007 (the date of acquisition of Veco Corporation by a non-party), Veco Corporation's records were located in Anchorage, Alaska, where Veco Corporation's corporate headquarters (and sole office) were located. To Massinon's knowledge, it is likely that Veco Corporation's records are still located in Alaska. (p. 77, ln. 2-26; pp. 92-93, ln. 13-27 & 2-27; p. 101, ln. 20-21);

(c) Veco Corporation does not carry out any business in Ontario or in Canada. Two of its subsidiaries did business in Alberta and one subsidiary did business in British Columbia, but Veco Corporation, itself, has never done a job .where at least one person has set foot in Ontario. (p. 7, ln. 12-25; p. 21, ln. 11-20; & pp. 15-16, lns. 25-27 & 1-10);

(d) Massinon has .no doubt that there's no Veco Corporation executives in Ontario. (p. 75, ln. 12-14); (e) Veco Corporation does not have any people working in Ontario (p. 17, ln. 20);

(f) Veco Corporation's subsidiaries have never had any business operations or offices in Ontario (pp. 17, ln. 2-27 & pp. 22-24);

(g) One of Veco Corporation's subsidiaries, Veco Canada Ltd. . who is not a party to the within litigation (the .Non-Party Subsidiary.) . has, in the past, performed two (2) engineering service projects based out of its Calgary, Alberta office for Alberta-based and Houston-based clients (not Ontario-based clients) in respect of facilities that were ultimately installed in Ontario. Employees of the Non-Party Subsidiary on these projects would attend in Ontario for business/site meetings. The first project was carried out about 10 years ago, and the second (and last) project about three years ago. The corporate records of Veco Canada Ltd. are located in Calgary, Alberta (p. 18, ln. 5-20; p. 22, ln. 1-4; p. 24, ln. 8; p. 26, ln. 7; p. 28, ln. 26-27; p. 29, ln. 1-21; p. 33, ln. 10; & pp. 33-34, ln. 26-27 and 1-3); and

(h) No other subsidiaries of Veco Corporation have done any work or projects in Ontario (p. 22, ln. 14-22 & p. 24, ln. 1).

5. It is of absolutely no relevance that the Non-Party Subsidiary performed (long ago completed) work on two (2) previous occasions from its Alberta office for non-Ontario based clients in respect of facilities that were ultimately built in Ontario.

6. In the alternative, taken at its very highest, the services performed (in the past) by the Non-Party Subsidiary in respect of facilities that were ultimately installed in Ontario can only be said to establish, if anything, a fleeting, unimportant and remote connection of a Non-Party Subsidiary to Ontario. The Plaintiff has provided no evidence that these Ontario projects (or the Non-Party Subsidiary) are in any way related to the subject-matter of, or issues raised in, the Plaintiff's Amended Statement of Claim. As such, these projects, and this fleeting connection, is not enough to establish a real and substantial

connection between Veco Corporation and Ontario. Veco Corporation has done nothing in Ontario that bears upon the Plaintiff's claim.

7. Also, the Plaintiff's affiant, John Knox, makes vague allegations in his affidavits against Veco Corporation alleging un-particularized notions of a conspiracy somehow relating to a prison construction project carried out by Veco Corporation's subsidiaries in Barbados (the .Prison Project.). Nowhere in its Amended Statement of Claim does the Plaintiff plead anything in relation to this Prison Project. Even assuming that this Prison Project is somehow connected to the Plaintiff's allegations against Veco Corporation in its claim, there is no connection whatsoever between the Province of Ontario and this Prison Project. Furthermore, any and all records relating to this Prison Project (and any executives or personnel involved in the Prison Project) are located outside of the Province of Ontario, namely in either Barbados, Alaska, Calgary or in British Columbia with Commonwealth Construction Canada Limited. (Cross- Examination of Seamus Kelly on behalf of Commonwealth Construction Canada Limited at pp. 22-28, 33-34 & 45 at ln. 1-6; and the Massinon Cross at p. 51, ln. 3- 13; pp. 68-69; p. 74, ln. 22-27; p. 75, ln. 1-27; pp. 113-119; pp. 181-182)

8. Finally, on his cross-examination, Massinon stated that, in his opinion, the Plaintiff's action should be tried in, and only in, Barbados because that is where the majority of the events, witnesses and documents are located (pp. 37-38, ln. 2 & 2-20).

SCHEDULE A-7

COMMONWEALTH CONSTRUCTION CANADA LTD.

1. Commonwealth Construction Canada Ltd. (.Commonwealth Canada.) is a construction company incorporated in British Columbia. It has no assets in

Ontario and conducts no business there. The attached corporate charts illustrate its ownership structure before and after September 6, 2007. Since September 6, 2007, Commonwealth Canada's only assets have been two subsidiaries in Barbados discussed below.

2. No specific allegations are made against Commonwealth Canada in the Statement of Claim.

3. According to the Plaintiff's witness John Knox (.Knox.), who is himself from Barbados and whose evidence the Plaintiff has not committed to be bound by, it seems that Commonwealth Canada is a Defendant only because the Plaintiff Commonwealth Canada was involved in the construction of a jail on lands in which the Plaintiff claims an interest. Knox Affidavit, paras. 46 to 54

4. No facts offered by the Plaintiff, Knox or obtained by the Plaintiff on its cross-examination of Commonwealth Canada's Senior Vice-President, Seamus Kelly link Commonwealth Canada to Ontario or otherwise support the notion that Ontario could possibly be a convenient forum.

5. The following uncontradicted evidence illustrates that there is no connection between Commonwealth Canada and Ontario. Commonwealth Canada Has No Business in Ontario

1) Commonwealth Canada is incorporated in British Columbia with an office in Coquitlam, British Columbia and an office in Barbados. It is registered as a non-resident company in Barbados. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 20, lines 11-13

2) Commonwealth Canada's only assets are two wholly owned subsidiaries incorporated in Barbados: (1) Barbados Correction Corporation (.BCC.) and (2) Barbados Correction Maintenance Corporation ("BCMC"). It has no assets in

Ontario and conducts no business in Ontario. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 6, line 13 to p. 8, line 5

3) Commonwealth Canada contracted with BCC for the construction of the jail in Barbados that is referred to in the Knox Affidavit. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 41, line 25 to p. 42, line 9

4) Construction of the jail in Barbados is finished. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 28, lines 17-22

5) BCC owns the jail and has entered a 25 year lease with the Bajun government for use of the jail. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 11, lines 10-14

6) BCMC is responsible for providing maintenance services for the upkeep of the jail. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 7, lines 21-22

7) Two people work in Commonwealth's office in Coquitlam, B.C.: Kelly and an office administrator. It has no employees in Ontario. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 33, lines 61-63

🙄 Two and a half people work in the office in Barbados. The ½ person is a local courier. One person is a local who serves as office administrator and third person is the maintenance supervisor for BCMC. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 30, line 56 to p. 33, line 60

9) Commonwealth Canada has a bank account in Barbados with the Bank of Nova Scotia and an account in Calgary, Alberta with the TD Bank. It has no bank accounts in Ontario. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 40, lines 16-17 and p. 42, lines 14-17

10) BCC had an account with First Caribbean International Bank (“FCIB”) in Barbados. BCMC will also have an account with FCIB. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 39, lines 23-25 and p. 40, lines 5-7

11) Until September 6, 2007, Commonwealth Canada was engaged in construction opportunities in a number of jurisdictions. It was owned by VECO Canada Ltd. While VECO Canada owned Commonwealth Canada, Kelly sent monthly reports on the construction of the jail in Barbados to VECO Canada in Calgary, Alberta. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 1-5 and p. 27, lines 7-11

12) Since September 6, 2007 Commonwealth Canada has been owned by MST Ventures Inc. (.MST Ventures.). Commonwealth Canada’s only business has related to its work in Barbados. MST Ventures is registered in the State of Washington. Kelly reports to MST Ventures. General Manager located in Alaska. Because the jail construction is finished, Kelly does not send monthly reports. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 28, lines 17-22 Flow of Funds Are Outside Ontario

6. Commonwealth Canada billed BCC for construction services. BCC paid Commonwealth Canada. Commonwealth Canada paid suppliers and trades. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 42, lines 6-9 and p. 43, lines 14-21 All Suppliers For the Construction of the Jail Were In Either the United States or Jamaica

7. Commonwealth Canada’s best estimate is that 60% of suppliers to the jail construction were American while 40% were from Barbados. Answers to Undertakings, letter to K. William McKenzie dated December 1, 2008 Relevant Records Are Located In Barbados, B.C., Alaska or Calgary

8. All electronic and hard copy records relating to the construction of the jail could be found in Barbados, Coquitlam, British Columbia, Calgary, Alberta and Alaska. There are no records in Ontario. Cross-examination of Seamus Christopher Kelly, October 20, 2008, p. 22-26

SCHEDULE A-8

ERIC IAIN STEWART DEANE AND THE ESTATE OF COLIN DEANE

These Defendants

1. Eric Iain Stewart Deane (“Iain Deane”) is an individual residing in the United Kingdom of Great Britain (.U.K.). He has resided there since September 2006. He is a theatre producer and director by trade.

Reference: Motion Record of the Defendants Eric Iain Stewart Deane and the Estate of Colin Deane, tab 2, the Affidavit of Eric Iain Stewart Deane, sworn November 6, 2007 [.Deane Affidavit.] at paras. 2 and 3

2. Iain Deane is the sole executor of the Defendant, the Estate of Colin Ian Estwick Deane (the “Estate”). He is also the primary beneficiary under the Last Will and Testament of Colin Ian Estwick Deane (the .Testator.) and the sole beneficiary of the residuary of the Estate.

Reference: Ibid. at para. 4

3. The Last Will and Testament of the Testator was probated in Barbados on September 22, 1982.

Reference: Ibid. at para. 4

4. At the time of the Testator's death, he was a resident of Barbados and his entire estate was, and continues to be, located in Barbados. In the course of his life, the Testator never resided in, nor even visited, Canada.

Reference: Ibid. at para. 5

5. Over the course of Iain Deane's life, he has been a resident as follows:

(a) Birth to 1972 . Barbados

(b) 1972 to 1982 . Canada

(c) 1982 to 1994 . United Kingdom of Great Britain

(d) 1994 to June 14th 2001 . Barbados

(e) June 14th 2001 to September 30th 2006 . Canada

(f) September 30th 2006 to present . United Kingdom of Great Britain

Reference: Ibid. at para. 6

6. In the Affidavit of John Knox sworn November 12, 2007 (the .Knox Affidavit.), at paragraph 43, Mr. Knox states that Iain Deane resides in Canada and has lived "at two or more locations in Toronto". While it is true that Mr. Deane resided in Canada prior to September 30, 2006, he has not resided there ever since. Mr. Knox admitted on cross-examination that his statement at paragraph 43 was based on information he obtained sometime between 2002 and 2004. Thus, John Knox's evidence at paragraph 43 is plainly incorrect.

Reference: The Affidavit of John Knox, sworn November 12, 2007 (the

.Knox Affidavit.), at para. 43; cross-examination of John Knox dated November 4, 2008, at q. 1429 - 1437

7. Being a U.K. resident, Iain Deane incurred significant costs to attend his cross-examination in this motion, which took place in Toronto. As it turned out, the questions put to Iain Deane on his cross-examination were pointless and unnecessary. The entire cross-examination constituted harassment and caused him to incur unnecessary expense and wasted time in travelling to Toronto.

These Defendants. Relationship to Kingsland

8. Prior to 1998, all of Kingsland's shares were owned by members of the Deane family, including the Estate.

Reference: Deane Affidavit, supra at para. 11

9. Iain Deane never personally held shares in Kingsland, but was registered in the books of Kingsland in his capacity as executor and personal representative of the Estate. He also never held any office with Kingsland nor has he been a director thereof, nor has he ever been an officer or director of any of the other bodies corporate named as parties in this Action. **Reference: Ibid. at paras 12 and 13**

10. In or around September 2005, the Estate sold its shares to Classic Investments Limited (.Classic.), and had no further interest in Kingsland. **Reference: Ibid. at para. 21**

These Defendants. Proceedings in Barbados

11. In or around October 1998, Marjorie Ilma Knox brought an Action in the Barbados High Court, being Action No. 1805 of 1998 (the .Knox Action.)

against Kingsland, Classic, the directors of Kingsland and the then shareholders of Kingsland, for a declaration that she was entitled to the pre-emptive right to purchase the majority of the shares of Kingsland, for an oppression remedy and for other relief. The Estate and Iain Deane were some of the named defendants to the Knox Action. On June 14, 2001, Greenidge J. of the Barbados High Court dismissed the Knox Action with costs (the .Knox Decision.).¹ **Reference: Ibid. at paras 16 and 17.**

12. Other legal proceedings have been instituted and/or are ongoing between Knox and some of the other parties to this action in Barbados (more specifically described in the body of the factum). Neither Iain Deane nor the Estate are party to those proceedings. The details of the subsequent appeals to the Barbados Court of Appeal and the Privy Council are described in the body of this factum. **Reference: Ibid. at para. 20**

13. Following the Judgment of Greenidge J. in the Knox Action, all of the Defendants, save for Iain Deane and the Estate, applied for security for their costs. These Defendants, on the other hand, brought an application to the Supreme Court of Judicature of Barbados (Action No. 2240 of 2002) seeking a charging order against Mrs. Knox's shares in Kingsland to secure the costs order. **Reference: Ibid. at paras 22 and 23**

14. In or around 2002, Mrs. Knox attempted to transfer her interest in the shares of Kingsland to her children (Mr. John Knox, Ms. Kathleen Davies and Ms. Jane Goddard). **Reference: Ibid. at para. 23**

15. The application was heard by Greenidge J. in or around September 2007, who granted the application and stated that the attempted transfer of Mrs. Knox's shares in Kingsland to her children in 2002 was an effort to delay, hinder or defraud Iain Deane and the Estate (the .Charging Order.).² **Reference: Ibid.**

16. At paragraph 22 of his Affidavit, John Knox states that Marjorie Knox transferred her shares to a .trust. in Miami Florida and that her children are the beneficiaries of the .trust.. Although this issue is unclear from the wording of the Affidavit (and John Knox refused to answer all questions on this issue at his cross examination), the Affidavit appears to suggest that any alleged .interest. the Plaintiff has in Kingsland, was created through the .trust. (see paragraph 25 of the Knox Affidavit). Mrs. Knox served a notice of intention to appeal the Charging Order. Her Appeal was dismissed due to Ms. Knox's failure to pay a security for costs order (Iain Deane's Reply Affidavit sworn March 7, 2008 at para. 3(a)) **Reference: Knox Affidavit at paras. 22 and 25.**

17. It is possible that the .transfer. referred to at paragraph 22 of the Knox Affidavit is the same transfer discussed by Greenidge J. in the Charging Order decision. When John Knox was cross-examined on this issue, Mr. Mackenzie refused to allow him to answer any questions. An adverse inference should be drawn to conclude that this so-called transfer of shares referred to in the Knox Affidavit and the transfer of shares discussed in the Charging Order decision are one and the same. As mentioned above, that transfer was held by the Barbados Courts to be made in an effort to delay, hinder or defraud Iain Deane and the Estate.

18. In or around 2003, Iain Deane issued a Writ of Summons (an originating process) against Marjorie Knox in the Barbados Court requesting that the Court set aside the above transfer of Mrs. Knox's shares to her children due to fraud. The hearing of this application is pending.³ If Mr. Deane is successful, any purported interest the Knox children have in the Kingsland shares (and, by extension, the Plaintiff might have in the shares) would be set aside. **Reference: Reply Affidavit of Eric Iain Stewart Deane, sworn March 7, 2008, at para. 3(d) and Exhibit .B.**

Phoenix Artist Management Limited

19. One of the named defendants to the action is Phoenix Artist Management Limited (.Phoenix.), an Ontario company. Phoenix has absolutely no connection to the issues in the Action and has never had any involvement in Kingsland, Classic or any of the other matters referred to in these proceedings. Reference: Deane Affidavit at para. 30 . A hearing has now been scheduled for early 2009 (**see cross-examination of John Knox at q. 1394 . 1405**)

20. Between the years 1978 and 1983 Phoenix represented (among others) Iain Deane as an actor and director. That is why his address upon application to the Supreme Court of Judicature of Barbados for Probate and Letters Testamentary, with respect to the Estate, was in care of Phoenix. Iain Deane is not, nor has he ever been, an owner, director, or officer of Phoenix. Further, since he had to travel extensively for work, during that period Iain Deane had all of his mail sent to him through Phoenix. This is the only connection between Phoenix and Iain Deane and there is no evidence of any connection between Phoenix and any of the other parties to this Action. **Reference: Ibid.**

21. Neither the Amended Statement of Claim nor the Knox Affidavit alleges any connection between Phoenix and the issues in this Action. Thus, it should be inferred that Phoenix was named as a defendant for the sole purpose of creating the illusion of a “connection” to Ontario.

Related Link

[Update~The Other Side Of The Kingsland Estate Court Matter Part XIII](#)

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33 RESPONSES TO THE NELSON BARBADOS GROUP LTD AFFAIR GOES TO COURT IN BARBADOS~THE OTHER SIDE OF THE KINGSLAND ESTATE COURT MATTER PART XIV

cg8 | [December 10, 2008 at 9:41 PM](#) |



RE: "Barbados Court Responds..."



David, the title of this post is misleading. At first I thought this was the response of the court as indicated in the title.

It is not. It is the filing of BWWR. How does this document show a current "response" by "barbados court" ???

Pat | [December 11, 2008 at 1:36 AM](#) |



Well, well, well.

What a dog's breakfast. I have only read it fast as it is near mid-night and my bedtime but it seems that Knox's affidavit has not held up. I am surprised that MacKenzie did not allow him to answer questions. This is not a trial, it is a discovery of the evidence.

The whole thing seemed to be a waste of time - and money.

Calling Keltruth, lets see what you can do. Give us your opinion on the above filing. We are eagerly waiting.

David | [December 11, 2008 at 3:06 AM](#) |



We are aware that this was a discovery and not a trial. We have used the title to convey the meaning that the Barbados Court finally gets a chance to be involved in this matter after being dealt with in Canadian courts for sometime. However in light of the feedback we have amended.

On a another matter we have to say that the BU household was somewhat offended at the tone of language coming through from reading the document concerning the examination of the Chief Justice by the plaintiffs lawyer.

BWWR | [December 11, 2008 at 4:45 AM](#) |



cg8 // December 10, 2008 at 9:41 pm. This is not a reply from the Barbados Court, but from Barbados itself through its counsel in Canada to the calumnies heaped on it by John Knox on behalf of the affiant, nelson Barbados Group Limited aka Mental Madge and Pouffy Pete.

Also it is a reply from our much-maligned and defamed Chief Justice.

Item: It appears that Keltruth and BFP fraudulently claimed that the CJ had sat and ruled on a matter in which he had a conflict of interest. However, the truth is that the CJ signed the judgment of another judge on behalf of that judge when that judge was not physically capable of doing so himself and the cover page of the judgment states this. It was not the CJ's judgment and he did not sit on the case.

Item: As Mr David Simmons Q.C., a solicitor in private practice, the CJ acted, in 1990, in respect of a corporation named S.B.G. Keltruth and BFP have claimed that S.B.G. was misrepresenting itself in that it was not a coporate entity and that the CJ knew this and was acting fraudulently and was guilty of

misrepresentation - but look here - it WAS a corporate body and DID exist. Do you think we are going to see an editorial apology from Keltruth and BFP? Dream on. Insane Jane is not that kind of girl.

Item: Did anyone know that the Country of Barbados is bankrupt and unable to pay Barbados's costs in a Canadian court? According to Mental Madge, Insane Jane and Pouffy Pete it is. You see, clearly Pete and the Allarettes think they are so rich they can waltz in and take us over. Guess again, suckers.

Item: What about John Knox and the scandalous allegations in his affidavit about matters on which he had absolutely no evidence whatsoever - clearly, like his sister Insane Jane, John Knox has taken to communing with the spirit world (or, like their late father, ingesting a hell of a lot of spirits) and these revelations, like St Paul, just come to him through divine sources - although I would never describe Pouffy Pete and Little Willy as being divine. If you have read the whole document, then the Schedule A-3 close to the end will have been of great interest. What a liar. Yes, Keltruth, LIAR!!!

And what in this is the role of our friend Alair "Lilli Marlene" Shepherd? I would like to know why he is generally called Lilli Marlene? I associate Lilli Marlene with a film star of my era - Marlene Deitrich - and I have the image of her dressed in leather with very tall boots singing what was the favourite song of the German army. If you are going to find a female singer that is similar to Alair, I would have thought that another from my era would have been more appropriate - like Doris Day.

I am DEEPLY offended by the whole issue. For well over a year we have been hammered by Keltruth and BFP to the effect that Barbados is a complete waste of time - a vicious, lawless, ignorant community of savages that needs the divine guidance of the Almighty Peter Allard and Mental Madge and their apostles, Insane Jane, Johnnykins Knox, Fishy Heaslett, Little Willy and the like....all of them also-rans.

notesfromthemargin | [December 11, 2008 at 11:01 AM](#) |

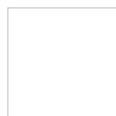


BWWR,

Given what is outlined above, presuming that it is in fact correct. Is there any legal recourse for the people in Barbados who have been defamed throughout the course of this suit?

Marginal

Anonymous | [December 11, 2008 at 2:23 PM](#) |



The BFP article about a strange vehicle parked outside the family member of keltruth says it all.

I said it before and will say it again I believe that the inciting of persons to invade the privacy of the knoxs and others related to this case is outrageous and should be stopped immediately by BU.

This has become very personal with insulting remarks being made about the individual knox family members by BWWR.

Note there are no such remarks made by the Knoxs against the defendants.

Anonymous | [December 11, 2008 at 4:12 PM](#) |



I've posted this on BFP and I'll post it here....



Quote from Kelltruth....

“At 1:20pm today, December 7th, 2008, a white Mercedes-Benz Sprinter 313 van, registration number M1149, stopped in the front yard of Jane Goddard's house. A dark-complexioned man, estimated to be in his forties, stepped out of the van. He was accosted by Jane Goddard and a large dog. The man stated he was looking for Charles Walcott. Does anyone know who owns this van? Who is Charles Walcott? Does he even exist? ”

I don't get this...

The van is a common van used for deliveries in Barbados. The guy gets out, says he's looking for someone, when he's told he doesn't live there, he gets back into the van and leaves. No mention of any threatening language, gestures or of refusing to leave or even any odd behaviour.

What about this was threatening? Or intimidating?

The fact that he was a black man?

That he was there at all?

40's is a little old for a thug don't you think?

ViewFromThe Real World | [December 11, 2008 at 4:22 PM](#) |



Anyone who has actually followed this case from its inception should be able to clearly define the base issue. It is not personalities nor even the merit of the case details which should be of concern. It is transparency & accountability. If business and government in Barbados were not so parasitically intertwined, making it next to impossible to uncover incorporation and financial records necessary for decision making on the part of its citizens without generating tremendous amounts of fees, legal costs, loss of assets due to time & the personal retrubutions resulting from seeking that transparency, this case would either not exist or exist only in one clearly defined and documented entity. As it has stood for decades, perhaps centuries, petitioning government for business/financial information concerning its elected, hired, or appointed agents and friends is like asking the magician to open up his bag of tricks & having him believe you'd still actually pay to see them 10 minutes later. The fact that someone would have to petition on the authority of a foreign jurisdiction to achieve transparency should be disturbing to all Barbados citizens.

Chris Halsall | [December 11, 2008 at 4:35 PM](#) |



@All..

This is a bit like Murdoch's Fox News...

Lots and lots of fast language... Quick video cuts... Flashing colours... Let them try to keep up...

Let's keep them off balance. Let's keep them scared...

Fear, Uncertainty and Doubt (FUD)... It works every time...

Sigh...

If nothing else, surly we have the ability to see we're being played here?

Don't we?

Pat | [December 11, 2008 at 4:40 PM](#) |



@View from the real world,

You talking nonsense. What right does the government have to give out private citizens information? Publicly filed documents can be acquired for a fee, and are available to all. Corporations report to their shareholders and not everything is public if the company is publicly traded.

You obviously does not have a clue what this case is all about. Go read the other Kingsland Articles on this Blog and then come back and join the discourse.

For your information, this case is not about transparency it is about an attempted miscarriage of justice by the Plaintiff.

Pat | [December 11, 2008 at 4:52 PM](#) |



@BWWR

I have not had time to read all the schedules, only John Knox' questioning. I have been busy making fruit cakes and coconut bread for my customers before I leave on vacation.

What alarms me, is that Nelson Group Barbados, seems to exist in a "dark hole", somewhere in outer space.

Are you sure it is not a CIA front..

It apparently carries on no business

...it has no directors except for one Best who no one knows anything about;

...it has no assets;

...it produces no financial statements;

...it has no company minutes;

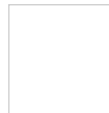
...etc., etc., etc.,

...it cannot state why it has grounds to sue Barbados and all its citizens;

...it cannot state what its business in Barbados is, apart from the lawsuit based on some tenuous claim to some of Kingsland shares;

Yet the person that calls themself VIEW FROM THE REAL WORLD, is on here talking about accountability and transparency. That person could only be thinking with an ass's ass for a head. That person cant be any Bajan, who benefitted from free education. cheupse.

Pat | [December 11, 2008 at 4:54 PM](#) |



Pat // December 11, 2008 at 4:40 pm

Corporations report to their shareholders and not everything is public if the company is publicly traded.

that should have read "if the company is not publicly traded".

notesfromthemargin | [December 11, 2008 at 4:57 PM](#) |



Actually Chris the court document above makes for interesting reading.

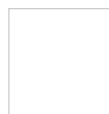
Most of the documents posted by BWWR are tedious to read but give a side of the discussion that you don't get from either BFP or Keltruth.

As to the "phantom van" it sounds to me like someone making a mountain out of a molehill. Maybe the person is genuinely scared or they maybe pushing their own agenda.

I am curious to see what judgement emerges from this case. I'm not so interested in what BWWR or Pat says as I am in the court documents. It's one thing to post generalities on a blog, you can't get away with it in a court of law, whether that court is here or in Canada.

Marginal

Pat | [December 11, 2008 at 5:01 PM](#) |



Anonymous // December 11, 2008 at 4:12 pm

Dear Anonymous, pay those people and their outpourings no mind.

They castigated our Chief Justice, our former Prime Minister and our current one. Yet, someone using the Anonymous handle (Anonymous // December 11, 2008 at 2:23 pm) above is claiming that they the knoxes via BFP and Keltruth has not made any remarks about the defendants.

These people think we are boneheads, who can neither read nor comprehend. What a laugh.

Chris Halsall | [December 11, 2008 at 5:09 PM](#) |



@NFTM... With respect, you've missed my point... (My apologies – I obviously didn't communicate my intended point explicitly enough...)

I am *very* interested in the actual fillings...

The "phantom van"? Nothing but FUD, as you say....

BWWR | [December 11, 2008 at 5:10 PM](#) |



notesfromthemargin // December 11, 2008 at 11:01 am

I am not too clear what recourse you are asking for. Assuming that you are asking if there is any recourse for defamation, most of that defamation has taken place on the Internet through the agencies of Keltruth and BFP. I am quite old now and never had to deal with cases of defamation involving Internet. After my time. Having said that, as we all know I do read and it seems to me that an action for defamation can be brought in ANY country where that defamation has caused damage. However, any learned counsel that want to take that question - anonymously, of course - please weigh in and we can learn from you.

That said, however, as I have pointed out previously, Keltruth is capitalized at US\$1,000 and gives the mailing address common to many other blogs in Miami - a shell company - like Nelson. Keltruth keeps on inviting people to sue it, but it is an invitation akin to a man at the South Pole asking a man at the North Pole to hit him. BFP, I don't know about and I sincerely hope it is located in Barbados.

I believe that what Barbados and Bajans CAN do to recoup from the prejudice caused is to come out on the Internet and show up the people who caused it - Mental Madge, Insane Jane and her siblings and Peter Allard, Little Willy, Fishy and the rest of the crew. That is what I have been doing.

In Barbados, it is my opinion that Sir David Simmons has an excellent case for criminal libel and that, if such is contemplated, the DPP may well be able to ground a successful application to Cable & Wireless to identify the proprietors of BFP. Were I Sir David (and yes, what you have read is accurate and verifiable) I would certainly go this route and also file a civil action.

Rest of the comments, Anonymous et al, I think I don't want to have all the fun, so I am going to leave you to honorary Queens Council Pat to deal with. That girl is GOOD.

HOWEVER, today I did send David some further court decisions and this latest will be very interesting to all the BU family and readers, except people like Anonymous who are trying to close the thread.

As I said once before, Sir David Simmons is a fine public servant, whether you like him and agree with him or not. He is not an instant millionaire - in fact I sincerely doubt he is a millionaire at all. I don't always agree with him, but I certainly will defend him with all I have got, because the man has integrity - pity about Greenland and the nepotism, but you can't have everything and what we have compensates for all else. He is in public service to serve his country, not to make money and it infuriates me when half-assed little rich spoiled brats like Madge Knox and Peter Allard and their crew try to tear down good people and accuse them of corruption, just because THEY cannot corrupt them. It annoys me even more when Barbados is also degraded and denigrated by them - and, Anonymous, if some Bajan in a white Mercedes-Benz Sprinter 313 van, registration number M1149, stopped in the front yard of Jane Goddard's house and asked for someone whom she and the other female dog with her didn't know, then the paranoia of the Knox/Allard camp ought to be taken to Jenkins for some serious and long-term

medication. But of course, they will say you trying to poison them.

Meanwhile, let us ensure that the Knox/Allard/Loveridge et al camps have their persons and properties fully protected so that the falseness of their portrayal of Barbados as an ignorant, violent society is clear to the entire world.

Peace

Anonymous | [December 11, 2008 at 5:11 PM](#) |

Interesting. Very interesting.



notesfromthemargin | [December 11, 2008 at 5:12 PM](#) |

Chris,



sorry, I'm being a bit thick today 😊

M.

BWWR | [December 11, 2008 at 5:29 PM](#) |

Pat, I was in mid-compose when you posted and have a little process to go through before it is posted. I had the thought you would have fun with that.



Personally, I go overseas to my family in a few days and chile you know what they asking for....Pone. So I been sitting here on my verandah for the last few hours grating cassava. I hope customs not going to take it from me when I get where I going.

I did send David some updated information and a court document that I think is very interesting.

But, there is one thing I want to go on record with. I have a total abhorrence of any form of violence or damage to people's property. I believe that there are many far better ways of doing things. If some Bajan resident in Canada filed a nonsense lawsuit against the Country of Canada and impugned the honesty and integrity of its prime minister (past and present) and chief justice and police forces and every hell else, then you can be absolutely sure that the reporters from the Globe & Mail and every other news outlet would be camping out on the doorstep of that Bajan and their every move would be monitored by the Canadian press. The press would not cause damage nor would they assault anyone - they would merely do their jobs - report. I am saying that Knox/Allard/Insane Jane and the rest have NO RIGHT to expect to be treated differently in Barbados than any other such complainant would be treated anywhere else in the world. No one is threatening them or their properties with harm and I sincerely believe that Bajans are peaceful people who just like to be gypsy and know what is going on. The Knox/Allard faction are news because THEY HAVE MADE THEMSELVES NEWS.

Anonymous | [December 11, 2008 at 5:32 PM](#) |

I looking for the last court document.



Anonymous | [December 11, 2008 at 5:34 PM](#) |



BWWR

I realise all this internet defamation thing that took place on BFP and keltruth is a bit beyond you at your great age so perhaps you could ask Pat how she views David's position at BU.

He and BU seem a bit shaky too when it comes to all this defamation thing.

Chris Halsall | [December 11, 2008 at 6:13 PM](#) |



@BWWR: "In Barbados, it is my opinion that Sir David Simmons has an excellent case for criminal libel and that, if such is contemplated, the DPP may well be able to ground a successful application to Cable & Wireless to identify the proprietors of BFP. Were I Sir David (and yes, what you have read is accurate and verifiable) I would certainly go this route and also file a civil action.

But, with respect, what if the "proprietors" of BFP (or, for that matter, BU, or any other Blog) could *not* be identified by LIME?

(Please trust me when I tell you this is a realistic possibility...)

So what then?

Both Barbados Free Press (barbadosfreepress.wordpress.com) and Barbados Underground (bajan.wordpress.com) are hosted on servers located in the United States. (Quoting Laurie Anderson: "Home of the Brave...")

So, in order to "identify the proprietors" of these Blogs, court action would have to be undertaken within the US of A.

On what grounds? Exactly... (!?)

And even then, an actioning party would have to hope that the "proprietors" had been stupid enough to have provided identifiable details...

Please forgive me for my above, but this is part of the "Fear, Uncertainty and Doubt" in "FUD"...

Free speech is here... Now... Right now...

It cannot be prevented...

It cannot be stopped...

The Internet routes around censorship the same way it routes around an outage...

It is now up to those in Power to Govern knowing this truism...

Pat | [December 11, 2008 at 7:50 PM](#) |



Anonymous // December 11, 2008 at 5:34 pm

BWWR

I realise all this internet defamation thing that took place on BFP and keltruth is a bit beyond you at your great age so perhaps you could ask Pat how she views David's position at BU.

He and BU seem a bit shaky too when it comes to all this defamation thing.

Anonymous, first, I am not a lawyer. I have no knowledge of the law, apart from the little I have read from time to time.

I was an analyst, who had honed my thinking skills to a fine edge. Sadly, however, with the advancing years, the edge is becoming dull. This happens when you retire and no longer have to be constantly on the ball.

To answer your question, BU to my knowledge has never posted any defamatory articles on any of the parties involved in this case. What David has done is to post publicly available legal documents and we, the bloggers, are the ones, right or wrong who may have stated something not quite friendly.

On those rare occasions, David, being the good moderator that he is, has intervened and cautioned us to be more circumspect, polite and to show "good manners", which we (including you) have always done.

On the occasions when he has been accused (wrongfully) of posting private information, he has gone to public documents and verified that he did not do so.

It is therefore my opinion, that David and BU and the entire BU family has nothing to fear with regard to defamation charges, etc.

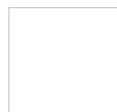
Thanks for eliciting my opinion. But remember, I am not too smart, yuh hear? I din guh to none of dem fancy schools like kolig, queens, lodge, etc., etc. I only went to the Modern Whore Shop - dah is wuh dem kids from dem fancy schools used to call we. Effin some of dem only did no that we would one day put sum uh dem to shame....

David | [December 11, 2008 at 8:04 PM](#) |



If we have to go to Court we will pass around a hat to assist with the legal fees 😊

Pat | [December 11, 2008 at 9:08 PM](#) |



@David,

Not to worry. I will be generous.

BWWR | [December 12, 2008 at 5:06 AM](#) |



Chris Halsall // December 11, 2008 at 6:13 pm . The scenario as you set it out means that, although litigation is possible, it is not advisable. I agree with you on that. An order to C&W will not bind a foreign provider.

GENERALLY, you are all missing the point. There are two types of libel - tort and criminal. IF BFP has as its provider C&W Barbados, on the basis of its CRIME, not its tort, of libel, the DPP ought to be able to obtain a judges order for the details of the person or persons who published (not necessarily wrote) the criminal libel.

If you want a definition of criminal libel, Wikipedia is the fastest and most convenient. It has a high burden of proof, as it cannot be on the “balance of probabilities”, but has to be “beyond a reasonable doubt”. Once you have looked at Wikipedia, have a look at the statements in BFP and Keltruth that the CJ sat on cases in which he had a conflict of interest.

In any case, what bothers me is that we see that the CJ never sat on that case at all. John Knox committed perjury by saying that he did. IF the CJ had sat on that case, all one of the counsel on the case would have had to do was to ask him to recuse himself. In those circumstances, ANY judge, far less someone with the integrity of David Simmons, would have stepped down without argument.

The self-serving lies of John Knox on this issue are really completely beyond the pale.

But yes, Chris. On the basis you have set out, such an action would not be worth pursuing.

David, if you get sued I suspect half of Barbados would contribute to the defense of BU and that includes me, but it isn't going to happen. There has never been any criminal libel on BU and because you edit and moderate so well, I suspect there never will be.

Chris Halsall | [December 12, 2008 at 1:39 PM](#) |



@BWWR: “GENERALLY, you are all missing the point. There are two types of libel - tort and criminal. IF BFP has as its provider C&W Barbados, on the basis of its CRIME, not its tort, of libel, the DPP ought to be able to obtain a judges order for the details of the person or persons who published (not necessarily wrote) the criminal libel.

With respect, I am not missing your point. However, with all due respect, perhaps you're missing mine...

I, personally, understand technology deeply.

Therefore, I know that at the end of the day, if someone is smart enough to use the available technology to their advantage, they will always be able to get their message out.

Empirical: If the mighty US Military Complex can't stop religious fundamentalists from using the Internet to coordinate their attacks, then can anyone from Barbados who's been maligned stop those who are maligning them?

Thus, it comes down to fighting fire with fire. Or, put another way, calling bullshit when its seen...

You, BWWR, have stepped up, and provided counter to Keltruth Corp. I do not know exactly why – perhaps you've been personally offended by the maligning of Barbados.

But, at the end of *this* *day*, this is the *only* way these battles can be fought in our modern world.

Threatening litigation brings deep fear into many hearts. But not all... To some Lawyers are nothing but foot solders.

And such litigious threats are usually empty and impotent. (And expensive...)

It is, in my mind, as if Niels Bohr was sued by Albert Einstein for his opinion on Quantum Uncertainty. ("God does not play dice with the Universe!")

Instead, they each died believing they each were correct, and presenting evidence and argument for public review to support their own position until the day they died...

Ah, the good old days...

BWWR | [December 12, 2008 at 2:59 PM](#) |



Chris Halsall // December 12, 2008 at 1:39 pm

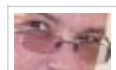
I am an old woman and this Internet is for me a foreign land. Remember that when I was growing up, a cable was the ultimate in overseas communcations. We didn't even have overseas telephone calls and in fact when I was young, telephones were not things you would have found in the houses of poor people like us.

Today all is different and I am sure you are absolutely correct. However, knowing the way things go, I think you are going to find at some stage that a way is found to bring legal actions for defamation. It is a fact of life that governments will always ultimately find a way to control things. Now, you are probably right and, to quote someone whose name I don't remember, it may be like trying to empty the Atlantic with a tea spoon. I only wish I was young enough to have your expertise - and I mean that sincerely. I find computers fascinating.

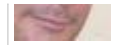
As for the position I have taken, it is simply because my country has been attacked. Barbados is a very different country to what it was when I was growing up, but the heart within remains the same. Bajans are decent, law-abiding people with a strong sense of justice. I hate to see that twisted and misrepresented. I will fight it no matter what.

So thanks for your expert advice, which I am sure is correct, on how the Internet works. But you never know your luck. Seems to me we dealing with some real idiots and maybe, just maybe, someone has slipped up.

Chris Halsall | [December 12, 2008 at 5:28 PM](#) |



@BWWR... I hope you understand and appreciate, I'm fighting your corner...



However, this does not mean I won't call you out and slap you around if you're wrong. (As I hope and expect you won't refrain from doing to me...)

You see, where we find ourselves today *demands* that we're prepared to stand behind what we say.

And, similarly, that we're prepared to admit that we're wrong when we are. (Therefore, we go the extra kilometre to *ensure* we're not wrong...)

@BWWR: "It is a fact of life that governments will always ultimately find a way to control things.

IMHO, in this day and age, Governments can't even keep up. They are too big; they are too slow. They have too many interests to take care of...

@BWWR: "As for the position I have taken, it is simply because my country has been attacked. Barbados is a very different country to what it was when I was growing up, but the heart within remains the same. Bajans are decent, law-abiding people with a strong sense of justice. I hate to see that twisted and misrepresented. I will fight it no matter what.

And, *my* personal fundamental point: keep doing it, Girl!

You, BWWR, have been the only legitimate counter to those defaming Barbados.

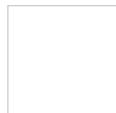
Ignore threats of litigation. Ignore threats of malice...

Keep reading, and bringing forward the truth.

It is more than any chamber of lawyers could ever accomplish....

Pat | [December 12, 2008 at 6:11 PM](#) |

@Chris Halsall



Thanks for your contribution.

Sometimes it seemed that BWWR was the lone voice crying out in the wilderness. Giving the other side of this charade and knowing from experience that she was truthful, is what made me support her position.

They (the other side) have said that we two are one person. They have called us both all kind of names, but, you know what, it has not shut us up.

Someone has to stand up for Barbados. Once a Bajan, always a Bajan. So, even though I am offshore, my navel string buried down there.

We also have to thank David for having the intestinal fortitude to put up her posts, when she could not get them up, not even a comment, on BFP.

Chris Halsall | [December 12, 2008 at 6:50 PM](#) |



@Pat: "Thanks for your contribution.

Any time (it's worthy)...

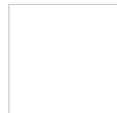
@Pat: "Someone has to stand up for Barbados.

Indeed!

@Pat: "We also have to thank David for having the intestinal fortitude...

Again. Indeed!!!

BWWR | [December 13, 2008 at 6:07 AM](#) |



Chris Halsall // December 12, 2008 at 5:28 pm

I do understand, Chris, and I thank you. I have respect for you and I believe you have for me - and both for Pat. Between such, the other(s) always takes on board critical comments. It is well known that I have absolutely no problem with admitting error on my part. If you cannot see any error in yourself, then chances are overpowering you won't see the truth either. Pat, for instance, will lick you down and then realize you are right and come out boldly, admit her error and take it from there.

We may rail about what is wrong in Barbados - and there are lots of things wrong - but frankly there is more right than in the rest of the world and it is high time we celebrated that. Barbados, to most of us Bajans, is like a greatly loved spouse - and like a greatly loved spouse, only we are allowed to criticize it.

And Pat, my dear, yes, we do have to thank David. But not just for providing a forum for the other side of Kingsland, but for the other matters he has brought to light and for the impartiality with which he treats them, even when he doesn't agree. It is one of the most valuable services Barbados has ever been provided with.

anonymous | [February 27, 2009 at 11:14 AM](#) |



do you people have nothing better to than moan about affairs that obviously do not concern you?