

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) FRIDAY, THE 15th DAY
MR. JUSTICE SHAUGHNESSY) OF JANUARY, 2010

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH,
GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY,
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO.,
KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE,
ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM
DEANE, LIONEL NURSE, LEONARD NURSE,
EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY,
OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN,
BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED,
GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED,
CLASSIC INVESTMENTS LIMITED, THORNBROOK
INTERNATIONAL CONSULTANTS INC., THORNBROOK
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,
THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX
ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND
COMPANY, C. SHOREY AND COMPANY LTD., FIRST
CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE
WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25
PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANS,
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

ORDER

THIS MOTION made by the defendants, PricewaterhouseCoopers East Caribbean Firm ("PwC"), and the other defendants, for, among other things, an order finding Donald Best ("Mr. Best") to be in contempt of this Honourable Court, and an order requiring K. William McKenzie ("Mr. McKenzie") to produce relevant documents, was heard this day in Whitby, Ontario.

ON READING the Motion Record dated November 27, 2009, the affidavit of the Richard D. Butler sworn November 27, 2009, the Supplemental Motion Record dated December 14, 2009, the Supplemental Affidavit of Richard D. Butler sworn December 14, 2009, the Factum of the defendants dated December 22, 2009, and the Brief of Authorities of the defendants dated December 22, 2009, and upon hearing the submissions of counsel,

1. **THIS COURT DECLARES** that Mr. Best is in contempt of this Honourable Court by reason of his failure to attend to be examined on Tuesday, November 17, 2009 and Wednesday, November 25, 2009 at 10:00 a.m. at Victory Verbatim in Toronto, in breach of paragraph 3 of the November 2, 2009 order of the Honourable Justice Shaughnessy (the "November 2, 2009 Order").

2. **THIS COURT FURTHER DECLARES** that Mr. Best is in contempt of this Honourable Court by reason of his failure to produce documents at least one (1) week prior to his examination on November 17, 2009, in breach of paragraph 4 of the November 2, 2009 Order.

3. **THIS COURT FURTHER DECLARES** that Mr. Best is in contempt of this Honourable Court by reason of his failure to attend to be examined before the Honourable Justice Shaughnessy and produce all documents referred to in paragraph 4 of the November 2, 2009 Order on Friday, January 15, 2010 at the Courthouse in Whitby, in breach of paragraph 3 of

the December 2, 2009 order of the Honourable Justice Shaughnessy (the "December 2, 2009 Order").

4. THIS COURT ORDERS that a warrant be issued for the arrest and committal of Mr. Best in the form attached hereto as Schedule "A", and that Mr. Best be committed to a provincial correctional institution for a period of *3 months*

JBS

5. ~~(2)~~ THIS COURT FURTHER ORDERS that Mr. Best pay a fine in the amount of \$7,500.00.

6. ~~DONALD~~ *BEST MAY BRING AN APPLICATION BEFORE JUSTICE SHAUGHNESSY ON OR BEFORE FEBRUARY 22 2010 TO PURGE HIS CONFESSION*

JBS

6. THIS COURT FURTHER ORDERS that notwithstanding any solicitor-client or other privilege between Nelson Barbados Group Ltd. ("Nelson Barbados") and Mr. Best (collectively, the "Clients") and Mr. McKenzie, Crawford, McKenzie, McLean, Anderson & Duncan LLP ("Crawford McKenzie"), and any member or employee of Crawford McKenzie (collectively, the "Lawyers"), and notwithstanding any duties of confidentiality owed by the Lawyers to the Clients under the Rules of Professional Conduct or otherwise, the Lawyers shall produce to the moving parties copies of *the following documents* ~~all books, contracts, letters, statements, records, and copies of same~~ of Nelson Barbados in the possession, power or control of Mr. McKenzie and Crawford McKenzie *ON OR BEFORE JANUARY 27 2010* ~~within seven (7) days of this order, including:~~

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- (a) the incorporation documents for Nelson Barbados, minute books, directors' register, shareholders' register, banking documents (including bank account opening documents, operating agreements and bank statements), non-privileged correspondence, notes, memoranda and other business documents and emails from the date of incorporation through to the present;

- (b) all books of account, ledgers and financial statements of Nelson Barbados from the date of incorporation through to the present;
- (c) all documents by which Nelson Barbados allegedly acquired security or an ownership interest in the shares of Kingsland Estates Limited ("Kingsland") from the date of incorporation through to the present;
- (d) all trust documents;
- (e) the retainer agreement between Nelson Barbados and Mr. McKenzie and/or Crawford McKenzie; and
- (f) all professional accounts for service provided by Mr. McKenzie and/or his firm, with respect to the action.

7. *subject* **THIS COURT FURTHER ORDERS** that Mr. McKenzie may not *privilege or* **THIS COURT FURTHER DECLARES** that the documents referred to in *with respect to the documents* paragraph 6 above are not the subject of litigation privilege or solicitor-client privilege. *referred to in paragraph 6 above.*

8. **THIS COURT FURTHER ORDERS** that in the event that Mr. McKenzie and Crawford McKenzie had, but no longer have, the documentation referred to in paragraph 6 above, Mr. McKenzie and Crawford McKenzie shall identify, with particulars, the date each document was prepared, the name of the individual who prepared the document, and they shall produce the last electronic version of the document in their possession, power and control, and they shall provide the names of individual(s) or person(s) to whom each document was provided, the date the document was provided to each individual/person, the reason why the possession, power and control over each document was lost, and the present location of each document. Mr.

ON OR BEFORE

McKenzie and Crawford McKenzie shall provide this information within seven (7) days of this

order. JANUARY 27 2010. JBS

10. 9. THIS COURT FURTHER ORDERS that the costs of this motion be paid by

Mr. Best personally, on a substantial indemnity basis within 30 DAYS AS FOLLOWS:

- (A) TO MR. RANKING'S CLIENTS \$ 50,632.90
- (B) TO MR. SILVER'S CLIENTS \$ 13,230.00
- (C) TO MR. ROMAN'S CLIENTS \$ 5,512.50
- (D) TO MS. CLARKE'S CLIENTS \$ 3,500.00

Justice Shaugnessy

[Redacted Signature] JUSTICE SHAUGHNESSY

Schedule "A"

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 IAIN STEWART DEANE,
 ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM
 DEANE, LIONEL NURSE, LEONARD NURSE,
 EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY,
 OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN,
 BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED,
 GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED,
 CLASSIC INVESTMENTS LIMITED, THORNBROOK
 INTERNATIONAL CONSULTANTS INC., THORNBROOK
 INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,
 THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX
 ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND
 COMPANY, C. SHOREY AND COMPANY LTD., FIRST
 CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE
 WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
 OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25
 PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANS,
 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

WARRANT OF COMMITTAL

TO ALL POLICE OFFICERS in Ontario

AND TO THE OFFICERS OF provincial correctional institutions in Ontario

WHEREAS I have found that Donald Best is in contempt of this court and have ordered imprisonment as punishment for the contempt,

YOU ARE ORDERED TO ARREST Donald Best and deliver him to a provincial correctional institution, to be detained there for a period of

Justice Shaughnessy

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barric

ORDER

FASKEN MARTINEAU DuMOULIN LLP

Barristers & Solicitors

Toronto Dominion Bank Tower

P.O. Box 20

Toronto-Dominion Centre

Toronto, Ontario

M5K 1N6

Gerald L.R. Ranking [LSUC#23855J]

Emmeline Morse [LSUC#56879M]

Phone: 416 366 8381

Fax: 416 364 7813

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

Prepared for, and on behalf of,
all Defendants

1471

Plaintiff

Defendants

Court File No. 07-0141

1472

(1)
Jan 15/10

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Barrie

SUPPLEMENTAL MOTION RECORD

Mr. G. Ranking + Mr. E. Morris
Mr. L. Silver
Mr. A. Roman
Mr. S. Carr
Mr. Rankin for McKenzie + McKenzie Law Firm

FASKEN MARTINEAU DuMOULIN LLP
Barristers & Solicitors
Toronto Dominion Bank Tower
P.O. Box 20
Toronto-Dominion Centre
Toronto, Ontario
M5K 1N6

Gerald L.R. Ranking [LSUC#23855J]
Phone: 416 865 4419
Fax: 416 364 7813

Lawyers for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

For further reasons to be delivered at a later date I find that Donald Best is in contempt of the Orders of this Court namely the Order of November 2 2009 and paragraph 3 therein as well as the Order of December 2 2009 and paragraph 3 therein.

I am satisfied in the material filed that ^{Donald} Mr. Best had actual notice of the Orders of November 2 2009 and December 2 2009. I am further satisfied that Mr. Donald Best was in notice of this charge motion for contempt yet he failed to attend ^{to} and ~~be~~ answer questions and make production as detailed in the Court Order of Dec 2 2009.

(2)

I am satisfied that the 3 part test outlined in *Suresh Chandra D v Fonguet* [2003] O.J. No. 3348 para 53 have been satisfied. Mr. Bas has not contravened both the letter and spirit of the Court's orders. He has knowingly acted in contravention of the Court's orders. I find that Mr. Bas is intentionally contemptuous of the Court's orders and thereby he intended to interfere with the administration of justice.

In determining the appropriate remedy I have considered:

- (a) the nature of the contemptuous act
- (b) the fact that the contemnor has not admitted his breach
- (c) the fact that the contemnor has not tendered an apology to the Court
- (d) the fact that the breaches are part of an ongoing pattern of conduct in which there are repeated breaches.
- (e) the fact that the breach occurred with full knowledge and understanding of the contemnor and is not the result of a mistake or misunderstanding.
- (f) the conduct of the contemnor exhibits defiance of the orders of the Court.

I have also considered the decisions in *Mulligan v Leel* [2006] O.J. No 3127; *Bowden v Kennedy* [1998] O.J. No. 1612 and *Oakley Manufacturing Inc vs. Bowman* [2005] O.J. No 5318 in considering the appropriate remedy.

(5)
 The material filed on this application indicates that Donald Best is a seasoned litigator and therefore is knowledgeable concerning the necessity for compliance with Court Orders and the consequences for non-compliance with Court Orders.

Therefore it is the Order of this Court that Donald Best be committed to a provincial correctional institution for a period of 3 months. Warrant for Commitment to ^{prison} ~~prison~~
 Further it is the Order of this Court that in addition to the terms of incarceration that Donald Best pay a fine of \$7,500.

It is further an order of this Court that Donald Best may apply to purge his contempt by appearing before Mr. Justice Sharynnyk ^{on or before February 22 2010} and answering questions and making production in terms of the Order of Justice Sharynnyk dated ~~November 2~~ Nov 2 2009 and December 2 2009. ~~and complying with~~

I have signed a draft Order that has further provisions relating to the attendance of Mr. McKinnon on an examination was set for February 3 2010.

The cost hearing in this proceeding remains ~~fixed~~ to proceed on February 22, 23 + 24 2010 at ~~Whitby~~ Oshawa Ont.

Costs

A bill of costs have been filed ^{by Mr. Rantey} in light of the finding of a deliberate ~~and~~ willful and

Containing contempt I find that an award of costs on a substantial inclusion of basis see is appropriate.

Nevertheless the ^{guidelines} ~~criteria~~ provided under the rules as well as the principle of ~~pro~~ proportionality ~~to~~ still must apply in this ~~matter~~ matter.

It is apparent that Mr. Rankin ~~has~~ did the substantial ~~work~~ work in relation to this proceeding.

After hearing submissions I hereby make the following Order of Costs on this proceeding as against Donald Beal payable within 30 days.

- (1) To Mr. Rankin's client's costs of \$50,632.90 (comprised of \$45,000 in fees and \$5,632.90 in taxable disbursements)
- (2) To Mr. Selman's client's \$13,230 inclusive of GST.
- (3) To Mr. Romano's client \$5,812.50 inclusive of GST.
- (4) To Mr. Clarke's client \$3,500 inclusive of GST.

J. B. Sharyley J

**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,
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GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
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DEANE, LIONEL NURSE, LEONARD NURSE,
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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

ENDORSEMENT

December 2, 2009

Mr. G. Ranking and Ms. E. Morse

Mr. L. Silver

Mr. A. Roman

Ms. S. Clark
Ms. Rubin for McKenzie and McKenzie Law Firm

For written reasons to be delivered at a later date, I find that Donald Best is in contempt of the orders of this Court namely the order of November 2, 2009 and paragraph 3 therein, as well as the order of December 2, 2009 and paragraph 3 therein.

I am satisfied on the material filed that Mr. Donald Best had actual notice of the orders of November 2, 2009 and December 2, 2009. I am further satisfied that Mr. Donald Best was in notice of this day's motion for contempt, yet he failed to attend to answer questions and make production as detailed in the court order of December 2, 2009.

I am satisfied that the 3 part test outlined in *Sussex Group Ltd. v. Fangeat* [2003] O.J. No. 3348, para. 53 have been satisfied. Mr. Best has contravened both the letter and spirit of the Court's orders. He has knowingly acted in contravention of the court orders. I find that Mr. Best is intentionally contemptuous of the court orders and thereby he intended to interfere with the administration of justice.

In determining the appropriate remedy I have considered:

- (a) the nature of the contemptuous act;
- (b) the fact that the contemnor has admitted his breach;
- (c) the fact that the contemnor has not tendered an apology to the Court;
- (d) the fact that the breaches are part of an ongoing pattern of conduct in which there are repeated breaches;
- (e) the fact that the breach occurred with full knowledge and understanding of the contemnor and is not the result of a mistake or misunderstanding;
- (f) the conduct of the contemnor exhibits defiance of the orders of this Court.

I have also considered the decisions in *Milligan v. Lech* [2006] O.J. No. 3127; *Boucher v. Kennedy* [1998] O.J. No. 1612 and *Oakley Manufacturing Inc. v. Bowman* [2005] O.J. No. 5318 in considering the appropriate remedy.

The material filed on this application indicates that Donald Best is a seasoned litigator and therefore is knowledgeable concerning the necessity for compliance with court orders and the consequences for non-compliance with court orders.

Therefore it is the order of this Court that Donald Best be committed to a provincial correctional institution for a period of 3 months. Warrant for Committal to issue. Further it is the order of this Court that in addition to the terms of incarceration that Donald Best pay a fine of \$7,500.

It is further an order of this Court that Donald Best may apply to purge his contempt by appearing before Mr. Justice Shaughnessy on or before February 22, 2010 and answering

questions and making production in terms of the orders of Justice Shaughnessy dated November 2, 2009 and December 2, 2009.

I have signed a draft order that has further provisions relating to the attendance of Mr. McKenzie on an examination now set for February 3, 2010. The cost hearing in this proceeding remains fixed to proceed on February 22, 23 and 24, 2010 at Oshawa, Ontario.

Costs

A bill of costs have been filed by Mr. Ranking. In light of the finding a deliberate and wilful and continuing contempt, I find that an award of costs on a substantial indemnity basis is appropriate.

Nevertheless the guidelines provided under the rules as well as the principle of proportionately still must apply in this motion.

It is apparent that Mr. Ranking did the substantial work in relation to this proceeding.

After hearing submissions I hereby make the following order of costs on this proceeding as against Donald Best payable within 30 days:

2. To Mr. Ranking's clients costs of \$50,632.90 (comprised of \$45,000 in fees and \$5,632.90 in taxable disbursements;
3. To Mr. Silver's clients \$13,230 inclusive of GST;
4. To Mr. Roman's clients \$5,512.50 inclusive of GST;
5. To Ms. Clark's clients \$3,500 inclusive of GST.

Justice Shaughnessy