

SUPERIOR COURT OF JUSTICE

B E T W E E N :

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, PHEONIX ARTISTS
MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C.
SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL
BANK (BARBADOS) LTD., PRICEWATERHOUSECOOPERS
(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

M O T I O N P R O C E E D I N G

BEFORE THE HONOURABLE JUSTICE B. SHAUGHNESSY
on December 11, 2012
at OSHAWA, Ontario

APPEARANCES:

N. Lutes

G. Ranking

Counsel for the Plaintiff

Counsel for the Co-defendant

Nelson Barbados Group Ltd. v. Cox et al
Submissions

MONDAY, DECEMBER 10, 2012

5 THE COURT: All right, the matter of Nelson Barbados and Cox and I know it's eleven twenty in the morning. I was given material, an affidavit of Mr. Best at about nine twenty-five or so this morning. I've spent all of this time reading, what are 46 pages, 310 single-spaced paragraphs of an affidavit, plus what I would say is conservatively another 75 pages of attachments. So that's why, unfortunately, I've had to come into court later. Now, it's...

MS. LUTES: Your Honour....

10 THE COURT: ...Ms. Loutes, you're appearing for Mr. Best?

MS. LUTES: Yes, I was just going to....

15 THE COURT: Mr. Ranking, are you ready to proceed? Are you representing Mr. Silver as well?

MR. RANKING: I am as well and he extends his apologies. He's just finished hip surgery so he could not attend.

20 THE COURT: I knew - he told me that on the last occasion.

MR. RANKING: Yes.

25 MS. LUTES: And I am here on Mr. Greenspan's behalf Your Honour. He apologizes that he couldn't be here in person this morning. He had a doctor's appointment. I'm his associate so we're here, still technically on the record, pursuant to Your Honour's previous endorsement that we'd be on the record until at least today and hopefully we can see what transpires this morning in terms of working things out as it's Mr. Best's instructions

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still that we no longer act for him.

THE COURT: I understand that but can I ask you some questions? Just to expedite things and I'm sure Mr. Ranking will be raising it but with the time that's available to me, I thought we were doing a very soft appearance today. I didn't think we were getting into anything substantial.

Primarily, this appointment was arranged because of the situation that Mr. Greenspan was in. So the things I'd like to know right off the top is one, has the passport been filed or placed in Mr. Greenspan's....

MR. RANKING: It has.

MS. LUTES: Yes.

MR. RANKING: I can address a number of issues which I think...

THE COURT: Yes, sorry Mr. Ranking.

MR. RANKING: ...we can go through relatively quickly....

THE COURT: Good.

MR. RANKING: The passport being one of them. But to assist Your Honour, I don't know - do you have an extra copy of the draft order?

MS. LUTES: I do.

MR. RANKING: I'm going to pass up the draft order that's been approved. It has been submitted to the court for signature; I gather it has not yet been signed.

THE COURT: I didn't see it, so.

MR. RANKING: But we're content - this as I say, has been approved by...

THE COURT: All right.

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MR. RANKING: ...all. What I was going to draw your attention to though, is I'd like to deal with the first paragraph, dealing with the Notice of Intention to Act in Person because the background here was I got an email from Mr. Greenspan indicating that he was not planning to attend today and I responded to him expressing some concern because while Mr. Best has faxed a Notice of Intention to Act in Person to me, there is no evidence that it's been filed with the court. And so I then responded to Mr. Greenspan and indicated that I was certainly content that he not attend provided I had evidence that the Notice of Intention to Act in Person had been filed. And I said, and if in fact it hasn't been filed then regrettably I am going to ask you or one of your colleagues to attend and indeed Ms. Loutes is here. So the problem that I am confronted with Your Honour, is if you look at paragraph of your order dated November 16th, it's quite clear that the application is adjourned - adjourned to December 11th...

THE COURT: Right.

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MR. RANKING: ...for the applicant either to retain new counsel or alternatively to confirm that he has filed a Notice of Intention to Act in Person.

THE COURT: Right.

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MR. RANKING: I spoke to Mr. Best today, who's refused to speak with me, and he has refused to confirm....

THE COURT: All right, well let me tell you, it came right up to my office and I think Madam

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Registrar, if you check what was brought down to you, you'll have - it's somewhat in a hand-written form.

MR. RANKING: It is.

THE COURT: You've seen it?

MR. RANKING: I have seen it; I just don't know that it's been filed and - and my....

THE COURT: Well....

MR. RANKING: Mr. Best would not confirm that it's been filed so that....

THE COURT: I can direct that it's filed, right now.

MR. RANKING: Right. As long as that's done....

THE COURT: Can I just see it? There's a note on top; "Justice Shaughnessy is dealing with this", so just a minute. We've got a Notice of Appearance from Mr. Silver. No there's another - is there not - there's another, like it's on a fax form. These are appearances of counsel. Did I bring it down?

COURT SERVICES OFFICER: I'm not sure.

THE COURT: Hold on, maybe I've got it here. Here it is. Now, this is dated December 7th to the trial coordinator and it says, "Per the order of Justice Shaughnessy, I am submitting a Notice of Intention to Act in Person sent to me by Mr. Ranking on November 14th. I also attach a fax transmission receipt, proving I sent copies to Mr. Ranking, Mr. Silver, Mr. Greenspan and Bill McKenzie." And on the Notice of Intention to Act in Person, I assume you have this copy?

MR. RANKING: I do.

THE COURT: Do you want to check it?

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MR. RANKING: I will. I don't need to do it now
Your Honour. I'm delighted that it's been filed.
Mr. Best had not confirmed that to me this morning.

THE COURT: Yes, well....

MR. RANKING: If that's been filed then I think
that puts my friend in a position where I no longer
need to - to trouble her, and certainly from my
client's perspective, and I'm grateful, thank you
for your advice that the Notice of Intention has
been filed.

THE COURT: The - but I do have a question on it.

MR. RANKING: Okay.

THE COURT: Now the second requirement over which I
had to unfortunately deal on the last occasion, was
getting Mr. Best to provide an address. The
address that's shown on the Notice of Intention to
Act in Person is an address in Markham. I'd like
to know counsel, is that an apartment building or
is that an actual house?

MS. LUTES: Could I have a moment Your Honour?

THE COURT: Yes, please.

MS. LUTES: Your Honour, Mr. Best has advised that
that's a house.

THE COURT: A house.

MS. LUTES: So that's the address and if my friend
could confirm this, my recollection is that we were
all copied - or maybe I wasn't on the email, but
all the parties were advised of that address at
some point, but if my friend could confirm that?

THE COURT: The other thing I noticed, all right,
that's fine. So Madam Registrar then, if it hasn't
been, would you please just mark this Notice of

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Intention to Act in Person as filed, as part of the court file?

COURTROOM REGISTRAR: Yes Your Honour.

THE COURT: Thank you. All right Mr. Ranking, that takes care of that.

MR. RANKING: Thank you very much Your Honour. The second matter deals with the passport. That is dealt with in paragraph 6 a) of the Order.

THE COURT: Yes.

MR. RANKING: I've spoken with my friend because if Mr. Greenspan is no longer counsel of record, we wanted to deal with that and my friend, on behalf of Mr. Greenspan's office, has indicated that they are content to continue to hold Mr. Best's passport, until such time as Mr. Best engages new counsel and I'm certainly content that that occur and that we just proceed on that basis.

THE COURT: Yes.

MR. RANKING: Those are the two administrative matters that I wanted to deal with. I do want to speak to the issue of late filing of material that I only received this morning. It was faxed through on six different faxes between nine and ten o'clock last night. I do have submissions on that. I don't know how you wish the - the morning to unfold so I'm in your hands.

THE COURT: Well I think that we have dealt with the Mr. Greenspan issue.

MR. RANKING: I think we have.

THE COURT: I think we can let counsel go.

MR. RANKING: Yes.

MS. LUTES: Thank you Your Honour.

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THE COURT: Thank you.

MR. RANKING: I guess Mr. Best, you can move up to the counsel table so that I can hear - get all this recorded and try to find out what we're going - what he's asking for. I think I know from reading the materials, but - in fact, I think I'm going to direct this a little bit because everyone's entitled to their time in court. They're not entitled to an unlimited time in court and frankly, I am right in the middle of a civil jury trial and I'm trying to get ready to charge my jury tomorrow morning, so I'm going to have to direct this just a little bit, not too much, just a little bit. Mr. Best, you want to retain counsel?

MR. BEST: Yes, absolutely.

THE COURT: Your affidavit material, now, I've read it so I don't have to hear you again. But I want to indicate, I'm very - there's a number of things that you want to do, that to me appear completely irrelevant to what I'm dealing with. First of all, this was your application, brought after you retained Mr. Greenspan to purge the contempt. That's what the original application was. As I read your material, and you correct me if I'm wrong, the - you indicate now that you want to bring malpractice actions as - I'm using your words, against Mr. Ranking, Mr. Silver, I'm not sure who else. Is that right?

MR. BEST: May I - may I speak to you sir?

THE COURT: Yes, but you answer my question and then I'll hear you. Is that right? Is that not what your material indicates?

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MR. BEST: Sir, it - my material indicates Your Honour, that I'm looking for a lawyer who's willing...

THE COURT: I know that but I'm also asking....

MR. BEST: ...to....

THE COURT: Can you answer my question first and then I'll hear you on the others.

MR. BEST: Sir I was looking for a malpractice lawyer...

THE COURT: Right, for...

MR. BEST: ...as to what....

THE COURT: ...what reason?

MR. BEST: As to what will come of that, I would have to take instructions and get advice from my lawyer. As I - if you could just give me a moment here sir, there's a section that I've written about that.

THE COURT: I read it. I've read it. You go ahead and look; I know what's in there.

MR. BEST: I wanted Your Honour to - ask your permission to file this with the recordings and all the evidence. I've served it on Mr. Ranking and Mr. Silver this morning. Mr. Ranking accepted it for Mr. Silver.

THE COURT: No, no, no. Mr. Ranking's already indicated that there's going to be issue about whether you can even file - have a late filing of the material.

MR. BEST: I see sir.

THE COURT: So I - I'm trying to understand; just get this focused. I think that's what I'm trying to get, is a focus here.

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MR. BEST: Your Honour, perhaps if I could read you....

THE COURT: All right. Just forget my question then. Getting a new lawyer, what's the difficulty because you seem to have financial means based on the affidavit you've put before the court as to what you paid Mr. Greenspan. I don't...

MR. BEST: Your Honour....

THE COURT: ...know if I should be told all that. But I've been told, so you obviously have the financial ability, right?

MR. BEST: If I could - if I could read about my efforts to get a lawyer, that would answer your question Your Honour. Just - if I could just have a moment to find the particular section Your Honour. I have - there's a list of lawyers in here.

THE COURT: I saw it.

MR. BEST: Yes, thank you Your Honour, and my efforts to find and retain an experienced lawyer who's willing to represent me - they're serious and vigorous and they continue daily. And Your Honour, I've spoken with many more lawyers than are even indicated in the - in the list and of the - you've asked me what the difficulty is. Well of the lawyers who refused my case, some of the reasons given include conflicts of interests with the large law firms and lawyers, conflicts with some of the various companies, using the PricewaterhouseCoopers brand, lack of experience in civil contempt, a lack of experience in civil cases, a lack of experience in criminal cases where incarceration is a

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5 possibility, and a reluctance to take legal steps
that could damage the careers of other lawyers and
fears that taking the case would damage their
business and/or social relationships. Some lawyers
refused my case and did not provide their reasons
or - or didn't return my calls. But as an example,
Mr. Will McDowell of Lenczner Slaght, I'm not sure
if I'm pronouncing the law firm's name correctly,
he - he - I had rather a - a communication with him
10 and he said, "Mr. Best, I'm afraid that by reason
of this firm's relationship with several of the
lawyers and the institutions on the list, including
current client relationships, we are unable to
represent you. We appreciate being advised of the
full dimensions of the problem so that we could do
15 a proper conflict search. All the best." And I
had sent him quite - some material. I've attempted
to retain a lawyer, Your Honour, and I've had many.
You - this is why I need a lawyer to speak for me
and put it all before the court since Mr. McKenzie
20 was taken from me.

THE COURT: Why - can I ask you....

MR. BEST: Yes, Your Honour.

25 THE COURT: In the material that you've filed, you
mentioned Mr. Greenspan brought a Mr. Davis on
board to assist him as it relates to the civil
parts of this. Is there any reason you can't
retain Mr. Davis, because obviously he must have
some knowledge as a result of his involvement with
Mr. Greenspan, according to your affidavit, which
30 is - what is the date this affidavit was sworn?
Just so we've got it on the record.

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MR. BEST: May I just take a moment and have a glass of water here Your Honour? I'm trying to think of how to answer the question. I don't know how to answer the question in the proper way. I need a lawyer but....

THE COURT: You're answering it fine. I'm not having any difficulty understanding you. I'm just saying your affidavit....

MR. BEST: I hear you Your Honour.

10
THE COURT: I'm just looking for the date that the affidavit....

MR. BEST: I - I hear you Your Honour. I didn't retain Mr. Davis; Mr. Greenspan did.

15
THE COURT: Right, yes. Your affidavit dated December 10th is what I'm referring to.

MR. BEST: Your Honour, I don't know if I want to go there but if you order me to, I will tell you why.

20
THE COURT: No, if you don't - if you're saying you didn't meet Mr. Davis or Mr. Davis wasn't prepared to take on your case, that's fine. If you also feel that you don't have confidence in Mr. Davis, you can say that. That's fine; I can accept that. I'm just curious...

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MR. BEST: Well Your Honour, I'll tell you....

THE COURT: ...as to why....

MR. BEST: I'll just tell you the truth; that's all I got. We're in a meeting....

THE COURT: No, no, no. You're going to....

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MR. BEST: I - no, no.

THE COURT: You're going to get into matters of solicitor and client privilege and...

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MR. BEST: I see.

THE COURT: ...I don't want to get into that.
Simply, I just asked a question; I think it can
have a simple answer without you getting into
solicitor/client detail. I....

MR. BEST: Mr. Davis made a statement that....

THE COURT: Is it your preference not to have
Mr. Davis?

MR. BEST: Sorry sir.

THE COURT: Go ahead.

MR. BEST: Mr. Davis made a statement. On the
basis of that, I decided I couldn't possibly hire
him.

THE COURT: All right.

MR. BEST: Your Honour, I've written to the - let
me continue here please. I contacted the Referral
Service of the Law Society of Upper Canada and I've
been told there's a list of lawyers who've
indicated they will engage in malpractice lawsuits.
That wasn't because I'm saying I decided to
introduce a malpractice lawsuit Your Honour. It's
just that I was having trouble and I figured that a
lawyer who engaged in that kind of work wouldn't
mind taking on other lawyers. And...

THE COURT: But Mr. Best....

MR. BEST: ...so I wrote them a letter and the
letters are exhibits. I wrote them two letters.

THE COURT: I see them; I've read them.

MR. BEST: And then I wrote Law-Pro and Your
Honour, as I say, I'm having difficulty, not
because I don't want a lawyer; I want a lawyer. I
desperately want a lawyer. I'm having difficulties

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5 because it seems all the - all the senior lawyers I
talk to; everybody is - knows everybody and they
don't want to break any eggs. And the junior
lawyers, they - they - they say they are too junior
and for those reasons that I read. So - but Your
Honour, there must be someone. There must be
someone and I am working diligently - I really,
really am. It's so unfair and it's so unfair for
10 Mr. Silver and Mr. Ranking to claim, and I'm - let
me read this. It's just terribly unfair; it's
unjust. Before I - yes, there's also - I get
people who have 20 years' civil experience.
They're very senior and they say, oh, you could go
to jail; you need a criminal lawyer. But I've been
that route as we see. And - I'm sorry, I've lost
15 my - my train of thought here Your Honour. I
really do need a lawyer. I want a lawyer. It's -
it is unfair that they have indicated - I've got to
find it; give me a minute here Your Honour please.
It is very opportunistic and a false position taken
20 by Mr. Silver and Mr. Ranking that I somehow
engineered to be without a lawyer. They wrote -
Mr. Ranking wrote me a letter and said, oh it's all
your fault; you're responsible for it. It is no
fault of mine. It is unfair and unjust that I am
25 being penalized for something out of my knowledge
and control. I had - when Mr. Greenspan hired
Mr. Davis to advise Mr. Greenspan, it was a
surprise to me. When he told me he had already
spoken to Milt Davis, this was in late September of
30 2012, it was a terrible surprise to me. I had
already spent 18 months and 60 some odd thousand

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dollars, borrowed, and then as soon as the - the -
I'll have to refer to them as "nasty emails",
started flying between Mr. Greenspan and
Mr. Ranking and Mr. Silver. Mr. Greenspan....

MR. RANKING: Your Honour....

MR. BEST: Mr. Greenspan....

THE COURT: Just a minute Mr. Best.

MR. RANKING: I am not aware of any nasty emails
passing between myself and Mr. Greenspan.

THE COURT: I'm not either.

MR. BEST: Well...

THE COURT: But you know...

MR. BEST: ...I don't even know if I can go there.

THE COURT: ...we're going to get off on a tangent.

MR. BEST: But I - but it....

THE COURT: Just let that go. Just go ahead Mr.
Best.

MR. BEST: In any event, it is unfair and unjust.
Now before Mr. Greenspan, I had another lawyer for
nine months and I paid him money too; he was a
civil lawyer. And at the end, he said, "I think
you need a criminal lawyer." A second opinion,
Mr. Greenspan, away I went. So Your Honour, I
desperately need a lawyer. My actions to date have
shown that I - I've - I'm desperate to find a
lawyer and I'm working diligently. It's Christmas;
it's Hanukah. I can't even get people to return my
calls so all I'm asking for Your Honour, are two
things really. For today, there's three - three
big things that concern me. One is I need time to
find my lawyer and I think it's - it's unfair and
unjust under all the circumstances that the cross-

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5 examination go ahead until I can properly find and brief a lawyer. And I sent a letter, an email, to Mr. Ranking and Mr. Silver. I have it here. I proposed that things be put aside until February and that the cross-examinations be put aside.

February - by February, somebody's got to be my lawyer; after Christmas and Hanukah. And if that doesn't happen, I - I would be asking the court to appoint me a lawyer or help me find a lawyer.

10 THE COURT: That's not the role of the court.

MR. BEST: Well I don't know that Your Honour. I'm sorry if I've offended you. I - I don't know that. So I just ask for it to be laid over until February to let me find a lawyer, post-pone the cross-examinations. It would do no harm. And - and the other thing is, I got arrested the other day Your Honour. I got arrested and the outstanding warrant is still on CPIC.

15 THE COURT: Well how did you get - how did you get arrested?

20 MR. BEST: I went to the police station to report as you ordered me sir.

THE COURT: All right, and that's where they arrested you?

25 MR. BEST: And - and I got in there and they said, "Hey, there's a warrant outstanding for your arrest." And I said, "No, there's - carry a copy of this...."

THE COURT: A copy of the court order.

30 MR. BEST: A copy of the court order, right there.

THE COURT: Right.

MR. BEST: And the guy says to me, and rightly so,

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he's a nice young man; he's sharp. He says,
"Anybody can do up that on a computer." And he
says, "I go by what's on this computer." Now Your
Honour, I don't know, I mean, you wrote an order to
put...

THE COURT: Well he....

MR. BEST: ...the arrest warrant out. I - and it
went...

THE COURT: Wait a minute.

MR. BEST: ...right to the police. I don't know.

THE COURT: Mr. Best, please, you are a retired
police officer...

MR. BEST: Yes sir.

THE COURT: ...or you were a police officer.

MR. BEST: Yes sir.

THE COURT: I don't know the basis upon which you
left but, and so you're fully aware of what the law
is and as it relates to warrants and you carry a
copy of the order in your pocket. You produced it
to the police officer. He didn't detain you in
custody, did he?

MR. BEST: Your Honour, he did for - I had....

THE COURT: Until you produced the order?

MR. BEST: Your Honour, I actually didn't have the
order with me and I had to have someone - I had to
call someone on the phone and have them come and
bring it to me.

THE COURT: Well that's....

MR. BEST: But here's the thing Your Honour, and
even then he wasn't sure, but here's the thing Your
Honour, there should be a procedure. There should
be - they obeyed your order to put it on - to put

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the arrest warrant on the system, why won't they obey your order to - to put it in....

5 THE COURT: I have made an order, which was at the request of your then counsel, Mr. Greenspan, frankly without anyone being present. But - you produced the transcript of the attendance of Mr. Greenspan before me, in your materials. It was on the basis that Mr. Greenspan simply asked that the execution of the warrant be suspended until certain dates, to enable you to come back into the country and to be able then to properly instruct counsel. That's what I did. And then there was asked, there was a request for a further extension in terms of execution of the warrant. I'm not setting aside the warrant. The warrant is still in place. You've been convicted. I think the point your missing here, if I can just get you focused...

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MR. BEST: Yes Your Honour.

THE COURT: ...is that you've already been convicted of contempt. Mr. Greenspan brought an application to purge the contempt. Now, without deciding the case, I already gave a date, maybe two dates, but certainly - I think it's two dates in the materials, for you to purge your contempt. You didn't come and you were - and I made a finding that you were aware. So notwithstanding all of that, Mr. Greenspan sought the order. The order he requested is the order I gave. I'm not doing anything else with the order.

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MR. BEST: Your Honour, I....

THE COURT: You're here for a limited purpose and frankly...

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MR. BEST: Your Honour?

THE COURT: ...here to purge the contempt.

MR. BEST: I don't understand. I apologize, I just don't understand. I need a lawyer. I'm just asking for a fair shot to get a lawyer Your Honour.

THE COURT: When you say you don't understand....

MR. BEST: This is not my fault.

THE COURT: I just want to make one other comment. In your own materials, this is your own affidavit materials filed today, and I'm not going to go through this, but on the reasons for motion for contempt, which is filed in the - next to your materials, you provide I think it's Exhibit Z, to your affidavit sworn December 10, 2012. You put in the reasons, my reasons on the motion for contempt, and they're written, and they're detailed. I detail in that, the difficulties and problems that were encountered throughout that litigation, in which you were President of Nelson Barbados, represented by Mr. McKenzie and the difficulties and problems we had with UPS post box addresses in Kingston, in Toronto; the Cloverdale Mall, the matters of answers to questions that should have taken place during the course of the litigation that didn't happen. And I - then the examination that came up, all of that is detailed in my reasons, including the background. And I also, in one of the reasons, which you also attach, which is - sorry, it's under the same decision. I refer at paragraph 30 of that decision to all of the cases in which you were involved with William McKenzie in one capacity or another, including third party,

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Submissions

5 sometimes as an affiant in affidavits, and I
outline at least seven incidents that were put
before the court of your experience involving
litigation. So you come here Mr. McKenzie -
Mr. Best, and you say, "I need a lawyer." Well, I
would like you to have a lawyer. If there's
certain senior lawyers who just do not wish to take
on the case, that you consulted, then that's
unfortunate. But nevertheless, the Law Society of
10 Upper Canada referral has provided you with the
list of names of lawyers. You don't want a junior
lawyer; that may be unfortunate. But I cannot do
anything more than hear you on the issue but I -
it's your choice as to which lawyer to retain.
It's not that there's no lawyer that you can
15 retain. It's that you cannot retain the lawyers
you want; that's quite a difference. And might I
say, the application I think by Mr. Greenspan was
in August, to have you come into the country. Even
at that time in the transcript that you've
20 provided, there was a discussion about a hearing
date in October. Now Mr. Greenspan getting off the
record was a new development, no doubt about it.
But on the last occasion, when you're still
represented by Mr. Greenspan, and Mr. Silver was
25 here representing himself and Mr. Ranking, we began
the process of setting dates and we set the date
for the cross-examination. So I don't - while I'm
quite - while I hear you about your efforts, I
don't believe that you cannot retain counsel; you
cannot retain counsel, senior counsel of your
30 choice. You can retain counsel of your choice,

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perhaps with less experience. That really is how I see the issue. Now you tell me what you have to say on that point.

MR. BEST: Yes Your Honour, let me - give me just a moment please. One moment Your Honour. I got this today Your Honour. It's a - just give me a moment. It's a transcript from my last appearance; I only got it today.

THE COURT: You got it today? I thought - I've got it in the affidavit material.

MR. BEST: No sir, this is from November 16th. The one that is in the affidavit material is from October 12th Your Honour.

THE COURT: Okay.

MR. BEST: If you just give me a moment please. I'm - what I'm looking for Your Honour, I briefly read this this morning. There is a statement here by Your Honour about - once again about me being an experienced litigant.

THE COURT: Well you may have before - but I've also answered it....

MR. BEST: But - but it's totally incorrect Your Honour. If you would excuse me for one moment - because obviously you were under a misinformation to speak about it.

THE COURT: Well you certainly have a recollection of it; you put into in your affidavit.

MR. BEST: But I wanted to put the quote in Your Honour, the exact quote. I wanted to locate it here Your Honour, because Your Honour has just brought it up again. But let me read something else to start and then I'll get back to this one.

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Now Your Honour, I have no idea why you would say that I am an experienced litigator because....

THE COURT: I already gave you - I gave you - I directed you to my reasons and I'm...

MR. BEST: I understand Your Honour.

THE COURT: We're not arguing the issue - that issue today.

MR. BEST: I understand but I'm saying that - that you've been misinformed and I can show you that.

Let me just read on. First of all, I was a police officer. I did what police officers normally do; nothing to do with civil - civil cases. During my time as police officer, I never appeared in court except as a witness. I was never a prosecutor or a Crown Attorney. I've never received any training in conducting civil litigation. In my recollection, I've read no books about conducting civil litigation and with the exception of the Nelson Barbados case, I've never been a plaintiff in a civil case in my life, nor has any company owned by me.

THE COURT: Were you a third party?

MR. BEST: I don't even know what that means Your Honour?

THE COURT: Go ahead.

MR. BEST: I've never been trained as, licensed as or acted as a paralegal or a lawyer. I am unfamiliar with rules and procedures of court litigation. To my recollection I have never personally filed any papers in any court about any civil litigation and neither have I appeared before a judge to deliver arguments during a civil

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litigation. This is the first time I have ever stood in a court like this in my life Your Honour.

THE COURT: Well listen, I've read the affidavit material.

MR. BEST: I....

THE COURT: I think I've heard enough on that. So what you today, you've outlined to me.

MR. BEST: Yes Your Honour.

THE COURT: You wanted the CPIC lifted that they - the execution of the warrant with CPIC. I've told you I will not do that. And my reasons are, the very basis of the application made by Mr. Greenspan which is in a transcript, which is attached to your material. And so that warrant remains outstanding and you'd be wise to carry the court order with you and I imposed the reporting condition because the circumstances under which you were brought back had changed; that is Mr. Greenspan was no longer representing you and I was very concerned about having due regard to my two, over two-year involvement with multiple applications and the difficulty in locating you, having you contacted, and your use of UPS addresses. So that's - I'm not going to do anything about that. Now, we're dealing with - you need time for a lawyer and you want to put everything off until February. Now in the hearing, I don't know Mr. Ranking, whether you have that transcript of that prior attendance and I'm not sure what it says. He's got a copy of the transcript so it must be available. But....

MR. RANKING: I was told my Mr. Silver's yesterday that it should be available for pick up today. I

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was going to pick it up today but I don't....

THE COURT: Well, I don't know if I got into this discussion with counsel but I clearly indicated that you know, I was available, I would make time in October for this hearing. I'd hear it in November. I would hear it in December.

Mr. Greenspan got off the record and now we had a date fixed; no objection was taken for January 11th.

MR. RANKING: January 11th for the cross-examination...

THE COURT: Right.

MR. RANKING: ...and January 25th for the return of the application.

THE COURT: Right.

MR. RANKING: And I don't know about the return date because I thought he had not fixed that, that that was left out. But what I said, I believe I said, I don't know, but to counsel is that I will not be here between somewhere around February 22nd, right out to March 25th. I then come back in and I begin, from March 25th to approximately May 6th, pre-trial motions in a criminal homicide. And that I'd begin the homicide with a jury May 6th, running right through to July. And I think that's where a lot of this information is probably now being understood. And then I said, I need to rest a little this summer and then I've got to get ready for another homicide which will start in September and will run through to December. And then I'm going supernumerary on January 1, 2014. So what I'm - if I didn't outline it and maybe Mr. Best has the transcript, he can tell me. That's what we

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were working against and hence, I was trying to do my level best to squeeze everything in and get it done before I leave towards the end of February. And my schedule - I have to be the one to hear this because it's my finding of contempt. And again, I just remind Mr. Best, your application brought by your then counsel, was to purge the contempt. In other words, change it, alter it, or expunge it, or none of the above. And that's - that was what's before the court. Now, in your various letters to the Law Society that you put in, to Law-Pro, which we might even discuss whether that's appropriate or not, but everyone of your letters is a lengthy, lengthy letter where you go into needing lawyers, on malpractice, and I don't know if they specifically refer to Mr. Ranking or Mr. Silver. But from your affidavit materials, clearly, you know, you've turned your sights on them and I just want to say to you Mr. Best, that's not what I'm dealing with. I'm dealing with contempt, already found. I've already found you in contempt of the court and in contempt of court orders and you're seeking to change that. It's as simple as that. It's not about malpractice. You want to go into forensic voice analysis; you're saying that the somehow the court has been misled by these counsel. MR. BEST: That's exactly what I'm saying Your Honour. THE COURT: You're entitled to say that but I'm telling you right now, if you're saying that you're going prove that the fundamental basis to set aside was the contempt, was maleficence on the part of

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Submissions

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Mr. Ranking and Mr. Silver, and I'm going to say to you, go back and read again, my reasons which were then supported in court and you chose not to attend court when you had notice of the application. But I'm saying to you, I'm not expanding this to a brand new hearing. I'm not re-litigating. You must understand this Mr. Best; I am not the Court of Appeal. I made - I gave a judgment. I made a finding. I am not the Court of Appeal. The Court of Appeal deals with anything that they feel I did wrong. The Court of Appeal is where you make applications for new evidence, not me.

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MR. BEST: Your Honour, I have no wish to offend the court. I don't know what I'm doing here.

THE COURT: You're not offending me. I'm trying to...

MR. BEST: And I'm sorry.

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THE COURT: ...get you focused. That's what I'm trying to do.

MR. BEST: I didn't mean to anger you.

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THE COURT: I'm not angry at all. I wanted to say to you, how long did it take you to prepare that material that you have in front of you right now that you've served or sent to me?

MR. BEST: I....

THE COURT: Any estimate?

MR. BEST: All weekend, Your Honour.

THE COURT: A weekend?

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MR. BEST: All weekend, yes. I guess it all comes from other things too. But Your Honour, I really do need more but may I - may I file this?

THE COURT: We'll come back to that in a moment.

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Let's deal with the lawyer. So am I correct that -
let's stop and get the submissions of Mr. Ranking
now on your request to adjourn the cross-
examination of January 11th and to really adjourn
any application hearing and you say to put
everything off to February.

MR. BEST: Well....

THE COURT: But I don't know what you mean by that.

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MR. BEST: Your - Your Honour, maybe I can make it
clearer. There's a January 25th date to set a
hearing date, which was....

THE COURT: That's right.

MR. BEST: That's right.

MR. RANKING: I've just pulled up the typed
endorsement.

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MR. BEST: May I....

MR. RANKING: I wasn't here Your Honour, but yes,
what it says in the typed endorsement, "This
application....

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MR. BEST: May I - may I finish?

THE COURT: No, no, he's just trying to help me.
He's right...

MR. RANKING: I'm just trying to help you Mr. Best.

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THE COURT: ...because - and he's agreeing with
you.

MR. BEST: I don't need any help from someone who -
who lied to me, lied to the court.

THE COURT: Mr. Best, this is my court.

MR. BEST: Sorry Your Honour.

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THE COURT: You will not speak to Mr. Ranking in
that - in those terms. If you....

MR. BEST: Sorry Your Honour.

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Submissions

THE COURT: It's not....

MR. BEST: I just don't know what to do. I need a lawyer.

THE COURT: That is not the correct approach.

Mr. Ranking is just trying to get me corrected on the date of January 25th.

MR. RANKING: Thank you Your Honour. The cumulative paragraph of your endorsement provides, "This application will be adjourned to January 25th at 9:30 a.m. PDST, resetting date for hearing."

THE COURT: That's the order that's sitting right in front of me. I got it, yes.

MR. RANKING: Thank you Your Honour.

THE COURT: All right. Now well Mr. Best, let's just have you stop there for a moment. I want to hear from Mr. Ranking about the....

MR. BEST: May I sit down Your Honour?

THE COURT: Yes, about the date - about the adjournment of the date set for the cross-examination and the date set to set a date. So January 11th and January 25th?

MR. RANKING: Your Honour, I speak on behalf of myself and behalf of Mr. Silver and we are instructed to ask this Honourable Court that those dates be maintained and that no adjournment be granted. And if I just can take you back to the history which you reviewed very briefly, this order was granted on the 9th of August. It was granted ex-parte when neither PricewaterhouseCoopers nor Mr. Cox had an opportunity to attend and to make submissions. The decision may well have been different had we had the opportunity to have been

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served with the materials and the opportunity to cross-examine. That didn't occur and I simply make that observation briefly by way of introduction. As you have pointed out, the motion was then returnable October the 12th; that date was then moved to November the 16th and we are now here at December the 11th. For those reasons and more importantly the reasons which you have expressed to both Mr. Best and I with respect to your availability, our position is that the cross-examination ought to proceed on January the 11th and it may need - we may need more than one day Your Honour. And that we should be returning before you, or certainly working with Ms. Travis to secure a date for the application as quickly as possible. Those are my submissions. Now I should also perhaps pause to observe, with respect to the November 17th issue in your contempt order, the contempt order was not issued merely by a reason of a telephone call on November the 17th. There was another attendance on November the 25th which Mr. Best did not attend and there was also, as you have alluded to this morning, the attendance on January the 15th before Your Honour when Mr. Best did not attend either. And I note that many, in my respectful submission, much of the information in Mr. Best's affidavit, I consider to be irrelevant and I do object to having it filed. I am - regrettably I had by BlackBerry on. I should tell the court as an officer, I did not receive any of the materials yesterday and I'm reading from an email from Mr. Silver, who indicated that he

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received six faxes, sent last night, the first of which came at 9:52 p.m. and the last of which came at 10:29 p.m. In the circumstances Your Honour, and of course you've read the materials, but I would ask that the materials not be - not be filed. There is one other issue though.

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THE COURT: Just on that, so all right. So it's - he wants - he seeks late filing. So I - what do I do? I can put it off and say all right, well then serve - you've received it but he cannot file it before a certain date. I mean, just - do you see what I'm saying to him about that circular argument and then you're going to cross-examinations. I just don't know - I'm trying to look for how to better procedurally expedite matters so we get on with this.

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MR. RANKING: Right. As long as it's clear in the court record, when I received - I didn't receive the materials until nine thirty five this morning and in the circumstances Your Honour, I'm not going to press the point more than I have. I just wanted it to be clear and for Mr. Best to extend some courtesies to counsel, which I haven't seen extended. If he is going to be acting for himself, we need advanced notice. And there is the other obvious issue; if the cross-examination is going to take place on the 11th of January, you know, we would like confirmation that Mr. Best is going to attend and we would like an order requiring him to attend on January the 11th because we're going to be spending a great deal of time and effort to prepare for that cross-examination. We don't want to be in
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position where we are taking our client's hard earned money preparing for a cross-examination only to find that Mr. Best did not attend. I have one other very brief submission, Your Honour, and it has to do with what I consider, to be again, another difficulty for Mr. Best and it is this; when Your Honour granted the order on January the 15th, 2010, that was the contempt order. You ordered Mr. Best personally to pay costs and you will recall the very expensive litigation that this particular matter entailed. PWC was awarded costs of \$50,632.90. Mr. Silver's clients were awarded \$13,230. We've seen from the material that's been filed that Mr. Best is able to pay for the very experienced counsel of Mr. Greenspan and based on Mr. Best's submissions today that he in fact engaged in other counsel. I respectfully request both on behalf of Mr. Silver's client and my client, that a condition of Mr. Best being permitted to proceed with this application be that he pay the costs ordered in paragraph 10 of your order dated January the 15th, 2010. Now I have an alternative submission with respect to that Your Honour, and that is this; if Your Honour is uncomfortable requiring Mr. Best to make that payment by reason of the application which is outstanding. At a minimum, I respectfully request that all of the costs enumerated in paragraph 10 - because there are costs for Mr. Roman's clients and those of Ms. Clark as well. At a minimum, I request that those costs be paid into court so as to ensure that at the end of this, there are at

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least the costs that were awarded by Your Honour and that our clients will at least recover those costs, if indeed Mr. Best's application is not successful.

5 THE COURT: Although many, many matters remain alive in my memory concerning this case, in the end, counsel came in on behalf of Mr. McKenzie, I presume it was Law-Pro. Didn't Law-Pro pay costs and why - I've got a confusion in my mind, what happened on that...

10 MR. RANKING: Right.

THE COURT: ...occasion?

MR. RANKING: What happened - yes, Mr. Duarte was replaced by....

15 THE COURT: Mr. Duarte coming off the record, I remember.

MR. RANKING: He was replaced by Mr. Rolland.

THE COURT: Right.

MR. RANKING: Ian Roland, of Paliare Roland.

20 THE COURT: Right.

MR. RANKING: There was lengthy discussions Your Honour, which then resulted in minutes of settlement...

THE COURT: Right.

25 MR. RANKING: ...that were executed on June the 7th.

THE COURT: Right.

MR. RANKING: And Mr. Silver and I then attended before you...

THE COURT: Yes.

30 MR. RANKING: ...and you'll recall we wanted to file these minutes of settlement as a matter of public record...

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THE COURT: Right.

MR. RANKING: ...because of litigation that was taking place in Florida.

THE COURT: Right.

MR. RANKING: And we also filed seven discs so as to ensure those documents were filed. These minutes of settlement provide for very extensive payment to the various parties, including you'll recall Mr. Bristow; you'll recall Ms. Clark, Mr. Schabas and others. Paragraph three of this, the long and the short of it, is those cost payments did not deal with the cost payments I am now seeking be paid by Mr. Best. Paragraph three provides, "PWC and the Cox defendants confirm that payment of the above amount satisfies all claims for costs in respect of the action against all respondents listed in paragraph one of the further further amended Notice of Motion dated April 22nd, including of the costs motion, except that PWC and the Cox defendants do not release Mr. Donald Best and shall be at liberty to pursue him for the costs, respectively \$50,632.90 and \$13,230 and contempt reflected in the order made by Justice Shaughnessy dated January 15, 2010, attached as Schedule B." And that was the paragraph to which I just referred you. So your recollection is absolutely accurate Your Honour. We were paid costs but the costs that were paid did not satisfy the cost award that you made on the 15th of January, 2010. Subject to any questions Your Honour, those are my submissions.

THE COURT: All right. Mr. Best, do you want to

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respond to that? So in short order, Mr. Ranking is saying no adjournment of the cross-examination, he wants the application date set and he's also seeking an order - well I've already ordered the examination to take place on January 11th, pursuant to the order of the 16th of November, which I'll sign for you; so that's taken care of. So I've already directed him to attend, so I don't think I have to make a further order.

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MR. RANKING: Yes, thank you Your Honour.

THE COURT: And then there's this issue of some 63, almost \$64,000 in costs that relate to the January 15th order that Mr. Ranking is asking be paid or alternatively, that you pay the money into court, pending your application.

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MR. BEST: Your Honour?

THE COURT: The hearing of your application. So this is your opportunity to reply to those....

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MR. BEST: I'm sorry Your Honour, I didn't realize that. Your Honour, as to the costs, I need a lawyer. Mr. Greenspan explained to the court, he didn't even know what they were - what it was all about and I - I can't say that I could do better than Mr. Greenspan. So I - I can't say anything
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Your Honour; I need a lawyer for that. As to the cross-examination, it just seems so unfair Your Honour. It just seems so unfair. I - this is not my fault, what has happened and I am trying so hard to get a lawyer and I need a lawyer and it's a
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serious matter. I'm going to jail for three months and if I don't convince the court and argue properly, I don't even know where forms are filed.

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It's just so unfair. They want to rush to justice. They want to rush to justice to gain an advantage over me and it's just so unfair Your Honour. This is not - this is not my intention to - to be without a lawyer. Everything I've done has - has - I've tried to do it properly and I've tried to get a lawyer. I'm trying to get a lawyer. Half the problem is, we're at Hanukah and Christmas. People don't even return their emails or their faxes or answer the phones.

THE COURT: Hanukah is eight days and Christmas, we haven't even got there.

MR. BEST: Well....

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THE COURT: I've heard you say that again. I'm working; jurors are hearing a trial for the last three weeks; they're here. I just....

MR. BEST: Your Honour it just seems....

THE COURT: The difficulty...

MR. BEST: Sorry.

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THE COURT: ...you're having is, when I look at the type of letter that you wrote to the Law Society of Upper Canada Lawyer Referral Service, and in particular, I think the Treasurer of the Law Society I think got it. You then wrote a letter to him and then you wrote Law-Pro. I mean, those types - in that letter, which is very long, you don't - you want a lawyer that specializes in what you call "malpractice". So effectively it's saying "I want to sue" to other lawyers or some other number of lawyers. It doesn't say, and frankly I said this before, in your own material - your own material properly states that contempt is a quasi-

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5 criminal proceeding in a civil context. It is not complicated. It really is not complicated. What is complicated is all the facts and history that went on in relation to the Barbados - Nelson Barbados versus Cox action. But that's been decided and I don't think you've got it clearly in your mind or you - what you - I think you've got it clear in your mind that you're going to bring all of those issues back because you keep talking about the very complicated history. You're going to bring all those issues and re-litigate them. I think all counsel really had to do - really have to have to do to understand this entire proceeding, and it appears to me you have it, is read my Reasons for Judgment. I make findings of fact on all, a multiplicity of issues. In fact, not all of the reasons are in here, of the issues I had to decide, including threats and all of that material. I gave written reasons on all of it. It wouldn't take a lawyer very long to sit down, perhaps in a few - no more than two to three hours to get a history, because I think - I spent a lot of time crafting my Reasons and detailing the history. But this narrows down to, you've been found in contempt. I gave reasons why I found you in contempt. I cited the principles of law that I applied and I imposed a sentence. Your application, brought by Mr. Greenspan, but it's your application, is to purge the contempt; to have that order modified, changed or expunged, or as I say, none of the above. Depending on - your application is none of the above, but I may or may

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not grant any of that relief. But that's what it is. That's what this is and it's not as complicated as you would postulate in your - in your affidavit dated December 10th. So I say to you, I have been dealing with this matter since August; it's now December the 11th. On November the 16th we set - we set dates with you know, knowing full well that Mr. Greenspan was no longer going to act for you. We set a date for a cross-examination. I heard no objection to that date and now you - you narrate a history that you can't retain counsel. But read in the context of the material you file, which I'm going to permit the filing of the material today and counsel - and counsel may file responding material if they so wish. But I think that material should be there for the purposes of any cross-examination that's going to take place. But - but Mr. Best, I'm not going to hear a re-litigation of the Nelson Barbados versus Cox case. It's been done; it's over. I've made my findings on jurisdiction; it's finished. If you don't agree with that decision, there's the Court of Appeal. There's also, if you don't agree with any of my decisions, including contempt, there was always the Court of Appeal. But Mr. Greenspan thought, perhaps wisely, that he could come back before me since I'm the judge who imposed the sentence, and ask that - that it be modified, varied, or expunged. Now I think that's my synthesis of what this is all about. So it's not complicated; it's not about malpractice of lawyers. If you feel that way, then your right is

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to commence a separate action. I can't tell you to do it; I can't advise you to do it. I can just tell you what procedures are available. But I also am going to tell you what issue I'm going to hear. And this case has got - has had so many hours devoted to it. I couldn't even comprehend how many hours, days, that I had hearings, issues that related to cross-examinations down in the Barbados itself. And I say to you sir, with all due respect, I'm going to give you your day in court, but you're not entitled to an unlimited time in court and you've had time to get counsel and you still have time to get counsel. It may not be the counsel precisely of your choosing. It may not be the malpractice counsel that you refer to in your material but you - you have time to retain counsel, to instruct counsel, and I've told you what the narrow issue is.

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MR. BEST: May I speak Your Honour?

THE COURT: Yes.

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MR. BEST: Your Honour, I don't - I don't understand a lot of what you said.

THE COURT: What don't you understand?

MR. BEST: And....

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THE COURT: I'd be happy to explain it.

MR. BEST: Well - about why, I'm not even sure I can repeat what you said Your Honour. I'm just....

THE COURT: Tell me what you don't understand. I'll be happy to explain it.

MR. BEST: I don't - I don't understand - I don't understand all your legal explanations, I really don't Your Honour. I'm not just....

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THE COURT: What legal explanations?

MR. BEST: But - but I accept that you've said it; I hear you Your Honour. I just - I know I need a lawyer and I'm trying my best to get one. This issue of malpractice, once again I'd like to say Your Honour, I only, after talking with the person on the help line at the Law Society, I explained that I couldn't get lawyers that wanted to do this. They didn't want to touch it. She said, well maybe a malpractice lawyer and I says, okay, give me the list. It wasn't that I'm setting out to look for one.

THE COURT: Well go...

MR. BEST: It's just that's what they suggested.

THE COURT: ...back and get another list of counsel who are willing to take on matters. The list is long and you know, I don't have to give you advice. You know already and have found a way to get counsel.

MR. BEST: I'm doing my best Your Honour, I really am working diligently on it; I am. I spend hours every day on it and I apologize.

THE COURT: No.

MR. BEST: I did not put myself in this position. It was not my idea to be standing here without a lawyer.

THE COURT: Do you understand though...

MR. BEST: But...

THE COURT: ...that if you don't qualify for Legal Aid...

MR. BEST: ...what I - I'm in your hands Your Honour.

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5 THE COURT: ...and I'm assuming you don't. And if
you can't get a lawyer, that doesn't mean the
proceedings are stopped. The issue really is, have
you had adequate time? And you've certainly known
since I would say, at least early November, that
Mr. Greenspan wasn't going to continue to act and
then the application was brought to the court. So
you've had a month and a half. How you define what
lawyer or what lawyer is acceptable to you, that's
entirely sir within your own discretion. But
10 having said that, the matter has to proceed; it is
your application. It's not like you're responding
to an application; it's your application. You've
asked the court for relief and it was brought back
in August. And you've had lawyers working on it
for months, according to your affidavit material.
And so, all the work that's been done by
Mr. Greenspan and worked up and material filed with
the court, that's already taken place. It's not -
it's not that anyone has done anything to you, that
20 anyone's brought an application as against you to
respond, this is your application. So in the
circumstances, I think I've heard all I can now and
I'm going to make some orders here. Do you have
the record? Is there anything else you want to say
Mr. Best?

25 MR. BEST: I'm in Your Honour's hands sir. I -
Your Honour, I just think it's so unfair after all
this way that I should be without a lawyer at the
last minute. It's not my fault and to have to go
through cross-examination without a lawyer, I don't
30 think it's fair. I don't think it's just. But I -

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and Mr. Silver and Mr. Ranking want to just like, express train. But I'm in Your Honour's hands. I can't do anything. I just have to rely on Your Honour, so thank you Your Honour. Oh one thing Your Honour, I heard you - I think I understood; I'm not sure. I think I understood and I'm not sure if by faxing it to the court and you reading it, that is filing it. You don't have a copy of the CD here and this is a bound copy, an original sir. I don't know what I should do with it.

THE COURT: I'm going to deal with that.

MR. BEST: I'm sorry sir?

THE COURT: I'm going to deal with it. Just give me a second, I'm writing....

MR. BEST: Thank you Your Honour.

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THE COURT: Are you working - are you presently employed Mr. Best?

MR. BEST: I would refer to myself as semi-retired Your Honour.

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THE COURT: What does that mean?

MR. BEST: I - I am looking for something now that I am back here. I don't know - I don't know what that will be. This looking for a lawyer in the case seems to take up all of my time.

25
THE COURT: What's your circumstances though? What income do you receive? Do you have a pension?

MR. BEST: I'm not sure what you mean sir.

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THE COURT: I'm trying to deal with costs and so one of the issues I've got to consider about costs is your - your financial - your present financial circumstances. Are you married?

MR. BEST: Do you mean my income tax - my income?

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THE COURT: Yes.

MR. BEST: I'm almost ashamed to say what my income has been for the last three years Your Honour.

THE COURT: Well don't be ashamed; just tell me. Do you have a pension?

MR. BEST: I think it - well the first wife took that Your Honour.

THE COURT: I mean, are you married now?

MR. BEST: Your Honour, I'm very hesitant to - to say anything about...

THE COURT: Your finances?

MR. BEST: ...members of my family. As far as my finances go Your Honour, I'm trying to remember what my income declared on tax last year was. But it was something in the neighborhood of 12 or \$13,000.

THE COURT: That's net, after expenses?

MR. BEST: It's....

THE COURT: Do you do investigative work? Do - do you run a company? That's what I'm trying to find out.

MR. BEST: All right. Your Honour, I'm unemployed. I don't - I have this company. I have people who have been helping me out. And....

THE COURT: Are you married? Are you living with somebody? Do you have a common-law partner?

MR. BEST: Your Honour, I - because of my desire to protect my family members, I would need legal counsel. I just - I mean, Your Honour, we're getting into safety issues now and....

THE COURT: I'm trying to deal with financial issues.

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MR. BEST: Well Your Honour....

THE COURT: You're not answering my question.

MR. BEST: I - I - I don't understand.

THE COURT: You're - well let me just....

MR. BEST: If I could only have a lawyer - my - my lawyer would be able to tell you.

THE COURT: Oh this is pretty simple.

MR. BEST: Your Honour, this is so unfair.

THE COURT: Mr. - can I just speak for a minute please?

MR. BEST: Yes Your Honour.

THE COURT: Mr. Ranking has asked that you pay the costs that total, by my math, \$63,862.96, or alternatively, that that sum of money be paid into court as a condition for you proceeding with this application to purge your contempt. Paying it into court means that the money is held there, then the hearing takes place, and then as a result of the hearing, either the money is paid back to you or the money is released. So that's what I'm trying to deal with; it's very simple.

MR. BEST: I don't have that kind of money Your Honour.

THE COURT: Well you haven't told me what kind of money you've got. Like, are you renting the house? You didn't tell me - I'm not asking for the name of a person that you're living with. I'm asking; do you have commitments? Do you have children? Do you have a mortgage? Do you have rent? Do you income from a common-law spouse that meets some of your expenses? I mean, that's what I'm trying to get at, but if you don't want to give me any of

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that, then just say so.

MR. BEST: I - Your Honour, I don't really understand. Mr. Greenspan was asked to speak to the costs. He didn't - he didn't have enough knowledge to speak about costs; I don't think I do either Your Honour. I just....

THE COURT: You don't have to speak to costs.

MR. BEST: I just need a few more weeks, to get over Christmas, so I can get a lawyer Your Honour, please. That's all I'm asking for, just a fair shot to get a lawyer. I've been trying. It's - it's always go fast, go fast, go fast when I'm standing here with my lawyer. It's what he wants. There's - it would do no harm to just wait until I got a lawyer. Thank you Your Honour. I don't mean to offend.

MR. RANKING: Your Honour, can I make one submission...

THE COURT: Yes.

MR. RANKING: ...on that point?

THE COURT: Yes.

MR. RANKING: And you may recall that there's a Mr. Peter Allard, that was funding the litigation?

THE COURT: Yes.

MR. RANKING: And I simply bring that to the court's attention as well. I have no idea or knowledge of what his involvement is, if any, with regards to Mr. Best and this application. I just don't know but I did want to bring that back to the court's attention.

THE COURT: Well I certainly recall Mr. Allard's involvement but if - Mr. Best doesn't want to tell

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me anything, so.

MR. BEST: Sorry Your Honour, may I get something out of my brief case, for just one moment?

THE COURT: I've made the following endorsement.

We will get you a photocopy. I hope - I am reading it slowly so that my hand-writing can interpreted.

"1. Mr. Greenspan is now removed as counsel of record for Mr. Best. However, as agreed by Mr. Greenspan, he will hold Mr. Best's passport until Mr. Best retains new counsel.

2. Mr. Best has now filed a Notice of Intention to Act in Person.

3. I am granting leave to Mr. Best to late file his affidavit and CD, sworn December 10, 2012. If so advised, the respondents may file responding material within 20 days.

4. I have already by order dated November 16, 2012, directed cross-examination of Mr. Best to take place on January 11, 2013. Based on the affidavit of Mr. Best and the various letters attached to this affidavit, he has been in contact with the Law Society of Upper Canada Lawyer Referral Service. His difficulty in retaining a lawyer appears to relate to the degree of experience of the lawyer that he wants to retain as well as the requirement that the lawyer be experienced in "malpractice". I am not satisfied that Mr. Best cannot retain a lawyer as he suggests. The application brought is to purge my contempt finding and set aside the order. This is not a complicated issue. As I explained to Mr. Best, this application is not a re-litigation

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of the Nelson Barbados versus Cox proceeding.
Therefore the cross-examination of Mr. Best shall
proceed on January 11, 2013, regardless of whether
he retains counsel.

5 5. Mr. Ranking seeks an order that Mr. Best pay
the costs ordered January 15, 2010, by me or
alternatively that the total amount of the costs,
\$63,862.96, be paid into court as a condition of
the application proceeding. I believe Mr. Silver
10 made the same request at a prior attendance. Mr.
Best will not provide any information concerning
his present financial circumstances. I am not
prepared today to deal with the outstanding cost
award. Counsel however, may renew the application
after the cross-examination takes place. All of
15 the terms of my order of November 16th, 2012
continue. Cost of today are reserved by me to the
date of disposition of this application."

MR. RANKING: Your Honour, may I just make - I
20 think you referred to your earlier order as
November 12th. It was November the 16th.

THE COURT: Did I?

MR. RANKING: That was towards the very end of your
endorsement.

25 THE COURT: Oh it's November 12th, right.

MR. RANKING: No, it's November 16th. It's your
earlier order.

THE COURT: The first part was right.

MR. RANKING: It was November - when you indicated
30 that your earlier order...

THE COURT: Yes.

MR. RANKING: ...would continue.

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THE COURT: Yes.

MR. RANKING: I believe you intended to refer to your November 16th order?

THE COURT: Yes. Did I say otherwise? "All of the terms of my order of November 16th, 2012 continue."

MR. RANKING: I apologize. I thought you said November 12th.

THE COURT: No, I probably read it wrong.

MR. RANKING: And one other point Your Honour.

THE COURT: Yes.

MR. RANKING: Just with respect to the late filing of the materials, the cross-examination may go longer than one day. Could you just indicate - because I think that the earlier - that paragraph seven indicates that - that the cross is set for January 11th and....

THE COURT: Regardless of whether he retains counsel. In light of the further material....

MR. RANKING: Just to the extent we need to go longer than the one day Your Honour.

THE COURT: All right. I've added, "In light of the further material filed by Mr. Best, the cross-examination may extend beyond January 11, 2013."

MR. RANKING: Thank you Your Honour.

COURTROOM REGISTRAR: Mr. Ranking just handed that to me Your Honour.

THE COURT: I've signed - here's the order, I think. So it's signed.

MR. RANKING: Great.

THE COURT: This one is signed.

COURTROOM REGISTRAR: Yes, Your Honour.

THE COURT: And I guess Madam Registrar, these are

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filed materials, so I assume this is really my copy.

COURTROOM REGISTRAR: Really it is Your Honour. He has that there to be filed.

THE COURT: All right. Do you want to file that now then?

MR. BEST: Yes Your Honour, thank you very much.

THE COURT: Give it to the Registrar. I think what I'll do then, is use this as my copy.

COURTROOM REGISTRAR: Right.

THE COURT: The one that was sent upstairs by fax.

MR. BEST: I have a spare one for you Your Honour.

THE COURT: All right.

MR. BEST: And another disc. Just give me one moment.

THE COURT: So that's page one here Madam Registrar, page two here, page three here. Okay, if I recall correctly, this is a Barrie action.

COURTROOM REGISTRAR: It is Your Honour.

THE COURT: Right. I'll give you that back.

COURTROOM REGISTRAR: I'll put all of this in your box.

THE COURT: Yes, if you don't mind; this as well.

COURTROOM REGISTRAR: Yes, Your Honour.

THE COURT: Thank you. Maybe if it's all right with Mr. Ranking, I will just stick this in here so I recall what was going on. All right? This is going to be - I'm just going to keep a copy of that November 16th order in my bench book.

MR. RANKING: That's totally fine, of course.

THE COURT: Thank you. See you in the morning.

MR. BEST: Sorry Your Honour, do I get a copy of

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whatever you wrote?

THE COURT: Yes, you are going to get a photocopy.
Just stay here; Mr. Mills will take - or the
Registrar will take care of you with my hand-
written endorsement.

MR. BEST: Thank you very much Your Honour.

MR. RANKING: Thank you Your Honour.


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CERTIFICATE OF TRANSCRIPT
EVIDENCE ACT, SUBSECTION 5 (2)

5 I, Charlene Strumos, certify that this document is a true
and accurate transcript to the best of my skill and
ability, of the recording of Nelson Barbados Group Ltd. v.
10 Cox et al, in the Superior Court of Justice, held at 150
Bond Street in Oshawa, on December 11, 2012, taken from
recordings No. 2812-206-400668-20121211-0906, which has
been certified in Form 1.

15
December 17, 2012



Charlene Strumos, Court Reporter