

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., COITTE, CAFFORD & CO.,  
KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE,  
ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM  
DEANE, LIONEL NURSE, L'ONARD NURSE,  
EDWARD BAYLEY, FRANCIS DEJER, 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., GHI 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

February 22, 2010

Mr. G. Ranking and Ms. E. Morse  
Mr. L. Silver  
Mr. D. Bristow

Mr. L. Keown  
Mr. A. Roman  
Ms. S. Clark  
Mr. S. Dewart  
Ms. Rubin for McKenzie and McKenzie Law Firm

1. At the commencement of this hearing related to the issue of costs I am advised that Mr. Bristow on behalf of his client wishes to file an affidavit of Frederick Cyrus which was served on Counsel for William McKenzie and his law firm on Friday, February 19, 2010. The Affidavit attaches a title search of the land registry in Barbados. In addition thereto Mr. Silver wishes to file a deed abstract from the same title search.

Mr. McKenzie has been cross-examined for 2 days and I am told that these public record documents flow from answers given in the cross-examination.

I direct that this Affidavit of Frederick Cyrus and the deed held by Mr. Silver may be introduced at the appropriate time that is when Counsel make their submissions. I further direct that Mr. McKenzie or any other person that Mr. Dewart deems appropriate may file responding material over the course of the next 3 days in response to the Affidavit of Frederick Cyrus and the deed.

All Counsel and this Court are of the view that there should not be an adjournment of this matter in view of the history of this proceeding.

2. I am further advised that the Defendants Commonwealth and Veco are not pursuing costs as against Mr. McKenzie or his law firm.

3. Mr. Ranking on behalf of his client seeks leave under Rule 39.02(2) for leave to file the Affidavit of Emmeline Morse sworn February 18, 2010 which attaches correspondence with an American Attorney and a Certification of Trust Agreement relating to Kathleen Davis as trustee of the Marjorie Ilma Knox Revocable Trust Agreement dated March 5, 2007.

The matter of the trust agreement and security agreement has been one of the issues in this proceeding for quite some time. Included on the Jurisdictional Motion the transcript for April 7, 2009 indicates that I directed the document to be produced. It was not produced. In the cross-examination of February 8/10 of Mr. McKenzie counsel were advised of the name of the lawyer in Florida who had the custody of the trust Agreement. Inquiries were expeditiously made to obtain the trust agreement and it was forwarded to Mr. Ranking on February 18, 2010. Mr. Ranking forwarded the same to Mr. Dewart on the same date.

This trust agreement has been the subject of production orders several times in the proceeding. It is relevant to the issues in the cost motion and would have been relevant to the jurisdiction motion if it had been produced.

Mr. Dewart objects to the introduction of the document after the examination of Mr. McKenzie. Again Mr. Dewart does not seek an adjournment of this cost motion.

I find this is reasonable and fair in all the circumstances to exercise my discretion and grant leave under Rule 39.02(1) to introduce the Affidavit of Euneline Morse sworn February 18, 2010 with the further premise that Mr. Dewart, if so advised, may file responding material over the course of the next 3 days.

**February 24, 2010**

1. After hearing submissions of Mr. Dewart this motion is adjourned to May 3/10 at 9:30 a.m.

*Justice Shaughnessy*