

VERBATIM NOTES
OF
COMMISSION OF ENQUIRY INTO CIRCUMSTANCES
THAT LED TO THE COLLAPSE OF THE FINANCIAL INSTITUTIONS
IN THE 1990s

HELD AT
THE JAMAICA PEGASUS HOTEL
81 KNUTSFORD BOULEVARD, KINGSTON 5

ON
THURSDAY, DECEMBER 2, 2010

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

REPRESENTING JAMAICA REDEVELOPMENT FOUNDATION Mrs.

Sandra **Minott-Phillips** - Attorney-at-Law

Mr. Gavin Golfe - Attorney-at-Law

REPRESENTING FINSAC'D ENTREPRENEURS

Mr. David Wong Ken - Attorney-at-law

C')MM POG'LE : Thursday December 2, 2010

2 Good morning, ladies and gentlemen:. This
 3 Enquiry is now in session. and I do hope we
 4 have a very fruitful day. Mr. Wong Ken?
 5 Yes, Commissioner. _

6 MR. WONG KEN: Just before you go on though., sorry, can, we
 7 COMM BOGLE: have the names of the. counsel, present and
 8 who they represent..

9 David Wong Ken; instructed by Wong Ken. and
 10 MR. WONG KEN: Company on behalf of the Association of
 11 Finsac'd Entrepreneurs.

12 Sandra Minott-Phillips, instructed by Myers
 13 MRS. PHILLIPS: Fletcher and Gordon on behalf of Jamaican
 14 Redevelopment Foundation. Thank you.

15 Mr. Wong Ken,

16 COMM BOGLE: can witness.

17 Yes, Commissioner,. you call your first

18 I call Mr... DEBTOR

19 MR. WONG KEN: 6. Whilst DEBTOR 6 takes, his seat,
 20 Commissioner, there is a witness statement
 21 that has been prepared and distributed.

22 DEBTOR 6 is seeking the Commission's
 permission that I read his statement on his
 24 behaf, and perhaps if

k'N

you agree, we could do it in the same

2 way that we did Mr. Willis.

3 MRS. PHILLIPS: Commissioners, with your leave. I recall

4 that the adjournment was granted on

5 condition that the witness statement was

6 submitted to the Secretariat by mid-day

7 yesterday for distribution to persons

8 interested. I have not received it yet

9 or any of the documents. Mr. DePeralto

10 was giving me a copy a couple minutes

11 before you entered and I asked him to

12 just await your arrival because given

13 the terms on which the adjournment was

14 granted, I thought it important for the

15 record to note that the statement is in

16 fact being distributed as the Commission

17 commences this morning

18 COMM BOGLE: Yes, Mrs.

19 Phillips, that was one of the points that was

20 made when we adjourned, that we hoped we would

21 have gotten the submissions in time for

22 distribution. I understand the Secretariat

got it pretty late and as such we are just

24 getting our copies this morning. Under the

circumstances however, again I would say

1 the cross-examination if you may so
2 wish, may take place at any time in the
3 future. Based on this therefore, I
4 would ask that he proceeds for the
5 presentation.

6 MRS. PHILLIPS: Very well.

7 MR. WONG KEN: Thank you for that indulgence but for
8 the record, 12 or clock was not the

9 deadline, it was to be delivered in the
10 afternoon. So I was a couple hours late
11 and for that I apologise. What could not
12 have been sent via e-mail was the
13 exhibits and those were delivered to the
14 Secretariat before 8:30 this morning.

15 COMM BOGLE: Okay, Mr. Wong Ken. We will on those
16 notes move on. And could you swear
17 DEBTOR 6

18 (DEBTOR 6 sworn)

19 MR. WONG KEN: Commissioner, may I sit whilst reading
20 the statement?

21 COMM BOGLE: Yes.

22 MR. WONG KEN: DEBTOR 6, do you have the witness
23 statement before you?

24 DEBTOR 6: Yes sir, I do.

25 Q And is that your signature on page 10,

1 the Statement of Truth?

2 A Yes sir.

3 Q DEBTOR 6, I am going to read

4 section...

5 COMM BOGLE: Just a minute.

6 Mrs. Phillips, you had said you had

7 given back Mr. DePeralto the submission

8 or you do have it?

9 MRS. PHILLIPS: I have it now, Commissioner.

10 COMM BOGLE: Go ahead, Mr. Wong Ken.

11 MR. WONG KEN: DEBTOR 6, I will read sections of the

12 statement and seek your agreement as I

13 go along. And could you please speak

14 into the mike when answering any

15 questions, either from the attorneys

16 here or from the Commission.

17 A Okay.

18 Q I DEBTOR 6 state as follows;

19 1.1 reside at and have my permanent

20 place of abode and postal address at 35

21 Barbican Road, Kingston 6.

22 Q DEBTOR 6?

23 A Yes, that's correct.

24 Q I am married to DEBTOR 6 SPOUSE.

25 A That's correct.

1 Q I have been in the construction industry
2 for over 25 years.
3 A That is correct.
4 Q In December, 1980, I incorporated
5 DEBTOR 6 Company Limited,
6 (hereafter referred to as 'DEBTOR 6 Company
Limited' or
7 'the company') that was owned. and
8 operated by my wife and I?
9 A That's correct.
10 Q That company was in the business of
11 constructing housing developments. From
12 in or about 1985 to 1998, the company
13 successfully completed several projects
14 including the following:--
15 a) [REDACTED] - apartment complex plus
16 1 - 4 bedroom house;
17 b) [REDACTED] - apartment complex plus
18 2 - 4 bedroom duplexes;
19 c) [REDACTED] apartment complex;
20 d) [REDACTED], apartment and
21 townhouse complex;
22 e) [REDACTED] - apartment complex;
23 f) [REDACTED] - apartment complex;
24 A That is correct.

25

Q

6.The company also developed a land bank

1 for projects that included;

2 a)1 acre - at [REDACTED], with

3 approval for Town House complex,

4 registered at title numbered Volume [REDACTED]

5 Folio [REDACTED];

6 b)3 acres - at [REDACTED],

7 with approval for Town House complex

8 registered at titles numbered Volume [REDACTED]

9 Folios [REDACTED];

10 c)10 acres -at [REDACTED];

11 with subdivision approval registered at

12 titles numbered Volume [REDACTED] Folios [REDACTED],

13 [REDACTED], [REDACTED];

14 d)1 acre at Retirement Road/Lincoln

15 [REDACTED], with approval for shops and

16 warehouse complex registered at title

17 numbered Volume [REDACTED] Folio [REDACTED];

18 A That's correct.

19 Q 7.In May 1994 DEBTOR 6 Company Limited took

a demand loan:.

20 facility from Horizon Merchant Bank and

21 Horizon Building Society (hereafter

22 referred to as Horizon) in the amount of

23 \$[REDACTED].-

24 A That's correct.

8.The purpose of that loan was:

1 A) \$ [REDACTED] to assist in completing
2 Crotona Mews;
3 b) \$ [REDACTED] to cover interest
4 expenses during construction, legal and
5 commitment fees;
6 c) \$ [REDACTED] for the 1st and 2nd
7 deposit in the purchase of [REDACTED]
8 [REDACTED].

9 A That's correct, sir.

10 Q 9. Loan funds were disbursed on Progress
11 billing certified by DEBTOR 6 Company

Limited's Quantity

12 Surveyor. The terms of repayment of the
13 Horizon Loan:-

14 a) Lump sum payments to principal from
15 sale proceeds....

16 b) All outstanding was to be deducted
17 from each loan disbursement.

18 A That's correct, sir.

19 10. The method of servicing interest
20 ensured that the company was never
21 delinquent on its loans and that method
22 was used throughout the relationship
23 between DEBTOR 6 Company Limited and

Horizon.

24 A That's correct, sir.

25 Q I tender as an exhibit a copy of the

Commitment Letter from Horizon dated May
2 4th 1994 (DEBTOR 6-1).

3 Q Commissioner, I am aware that the
4 exhibits had not been stapled and for
5 convenience I could identify the pages
6 OF DEBTOR 6-1 as pages one through five of the
7 exhibits.

8 COMM BOGLE: You are tendering this as DEBTOR 6-1?
9 MR. WONG KEN: I would like to tender this as Exhibit 1

10 DEBTOR 6-1.

11 COMM BOGLE: Exhibit DEBTOR 6-1.
12 MR. WONG KEN: I am at line 12.

13 12. On May 9th 1995, DEBTOR 6 Company Limited
took a
14 Demand Loan from Horizon that
15 'supersedes all previous commitments'.
16 The amount of the loan was \$ [REDACTED].
17 The loan was to be repaid from the sale.
18 of apartment units at the [REDACTED]
19 [REDACTED] and
20 from sales of units in the [REDACTED].
21 Provision was made for funds to be drawn down
22 against the facility to cover interest.
23 Essentially interest was serviced directly
24 from each disbursement, again ensuring that

the company was never

1

delinquent on its loans.

2

3

13.1 tender as an exhibit a copy of the
Commitment Letter from Horizon dated May 9th
1995 (DEBTOR 6-2).

4

5

And that may be found at pages 6 to 12 of
the bundle of exhibits.

6

7

COMM BOGLE:

So entered as DEBTOR 6-2.

9

MR. WONG KEN:

Thank you, Commissioner.

1 0

14.The [REDACTED]

11

[REDACTED] started in or about May 1995,
and the company received a first draw down
from Horizon of \$ [REDACTED]. 15.On

12

13

14

September.29th 1995, DEBTOR 6 Company

15

Limited took a Demand Loan from Horizon that

16

'supersedes all previous commitments'. The
amount of the loan was \$ [REDACTED]. The loan

17

18

was to be repaid from the sale of apartment
units at the [REDACTED] and from sales

.19

of units in the [REDACTED].

-20

21

16.Provision was made for funds to be drawn
down against the facility to cover interest.

22

23

Essentially interest was serviced directly
from each

24

disbursement, again ensuring that the

25

1 company was never delinquent on its
2 loan.

3 MRS. PHILLIPS: Just a minute, Mr. Wong Ken.
4 Commissioners, I don't know whether you.
5 are having the same difficulty I am
6 having but having just received the
7 witness statement this morning, the
8 pace in the manner that the proceedings
9 are going forward, without having had an
10 opportunity to read the written
11 statement, before or even any of the
12 exhibits that **are** being tendered the
13 pace is certainly a little quick for me.
14 I don't know the Commissioners are
15 having the same difficulty. I don't
16 know whether it would be slower if
17 DEBTOR 6 **were** to give his own
18 evidence and not hearing any
19 confirmation from him to each paragraph^s
20 that is being read -- I heard a couple
21 earlier -- and certainly as far as the
22 exhibits are concerned, certainly some
23 synopsis of the exhibits as each is being
24 tendered would certainly assist so that I
 could read it at the same time

1 that is being exhibited since that what
2 is now required of us.

3 COMM BOGLE: Two points. One, I agree that it is a bit
4 fast but however I would suggest that
5 possibly we make notes as we go along for
6 questions afterwards.

7 The second point on the synopsis of the
8 exhibits, I agree with you that we could get
9 some synopsis is of the exhibits as we go
10 along.

11 MR. WONG KEN: Thank you, Commissioner. I'll try my best.
12 By way of the an explanation, by way of an
13 explanation we sought to give a synopsis of
14 the relevant portion of

15 the exhibit as they were being tendered
16 and the relevant portion was in fact
17 those that dealt with interest. So what
18 I would then do, Commissioner, is have
19 DEBTOR 6 read the portion of the
20 exhibit that we are interested in and
21 the purpose for which we are tendering
22 the exhibit.

23 COMM BOGLE: I don't necessarily think that that

24 separation of duties is necessary. You
25 are reading and you are making the

1 submission, you can also summarize. As
2 z said we the Commissioners have just
3 got this this morning and we will surely
4 need some time after the submission to
5 go through and to phrase our questions
6 to DEBTOR 6 at a later date.

7 MR. WONG KEN: Very well commissioner.

8 I refer to exhibit DEBTOR 6-3 which may be
9 found at pages 13 to..19.

10 COMM ROSS: Mr. Wong Ken, if you could you just take.
11 us back to DEBTOR 6-1, perhaps what would
help
12 us is if we got some idea. as to what the
13 various loans were for. You could start
14 with that, DEBTOR 6-1, but we are moving very
15 rapidly in terms of time and quantum and
16 it would certainly help us to understand
17 if we got a little bit more information.
18 on each loan. Maybe similar information
19 to what was provided for DEBTOR 6-1 and
DEBTOR 6-2.

20 MR. WONG KEN: Very well, Commissioner.

21 I refer to DEBTOR 6-1 which can be found at
22 pages 1 through 5 of the exhibits
23 bundle. On the first page the purpose

24 of the loan is stated; the amount and
25 type of the credit is stated. Demand

1 loan for \$[REDACTED]. And the letter of
2 undertaking for.\$[REDACTED]. The purpose of
3 the loan \$4.5 million to assist in completing
4 the construction of [REDACTED]. A
5 development consisting of 16 apartments,
6 (8) ground floor 1-bedroom units with selling
7 price of \$1.25 million, and eight (8) second
8 floor 2-bedroom units. with a selling price
9 of \$2.2 million.

10 To finance the purchase of [REDACTED]
11 [REDACTED] - Purchase price \$11 million.

12 To cover interest expenses during
13 construction; legal and commitment fees:.
14 \$1.5 million.

15 The interest rate is stated at 65% and a
16 commitment fee. of 2%.

17 On page two of that document at the top of
18 the page repayment; and this is the
19 important paragraph for us to be repaid in
20 full within eighth(8) months of the date of
21 disbursements in lumpsum
22 payments to principal from sales
23 proceeds. Interest is payable monthly on
24

the last day of each month commencing on
May 31, 1994. However, as a special
condition, based on the purpose of the loan,
all outstanding interests will be deducted
from each loan disbursement. I refer to
DEBTOR 6-2.

COMM BOGLE:

Would like to see that one just go through the
disbursement conditions on page three.
Disbursement conditions.

MR. WONG KEN:

The disbursement conditions stated on page
3. An initial disbursement not exceeding
\$ [REDACTED] will be made: i) To reduce
construction financing
received from NCB -- \$ [REDACTED].
ii) To cover commitment of legal fees
\$498,307.00.
iii) Have cover first and second
deposits on [REDACTED]
[REDACTED] ..8 on receipt of sales
agreement - \$ [REDACTED].
b) Evidence that all relevant
restrictive covenants have been modified
(if necessary).
c) All future advances will be against
Quantity Surveyor's Reports.

1 d) A surveyor's Identification Report is to
2 be provided once all external walls have
3 been erected.

4 Referring to DEBTOR 6-2, which may be found
5 at pages 6 through 12, you will note the
6 first line on the Commitment Letter reads:-
7 This letter supercedes all previous
8 commitment letters.

9 The type of the loan- Demand loan; the
10 purpose:- To complete the construction of
11 [REDACTED].

12 b) To assist in the purchase of [REDACTED]
13 [REDACTED]. [REDACTED]

14 c) To purchase. [REDACTED]

15 The amount of this loan is
16 \$[REDACTED].

17 d) to construct ten townhouses and nine
18 (9)apartments at [REDACTED].

19 The Interest Rate:- (a) 53%; (b) 55%; (c)
20 55%; (d) 45%. And these interest rates
21 refer to the break down of the loan on
22 page one. So demand loan - \$[REDACTED]
23 at 65%.

24

25

1 Demand Loan -- \$[REDACTED] at 65%.

2 Demand Loan for [REDACTED]; and I am

3 not sure what the proposed loan is but

4 that was to be 45%.

5 COM. ROSS: Proposed loan of [REDACTED]

6 COMM BOGLE: DEBTOR 6, would be able to say what

7 was the proposed loan for?

8 DEBTOR 6: Based on memory sir, at the time I would

9 have to go back and make a check myself

10 because it has been a while.

11 MRS. PHILLIPS: It is stated at item (d) on the front

12 page.

13 COMM BOGLE: Thank you. Go ahead Mr. Wong Ken.

14 MR. WONG KEN: The interest provision at the top of the

15 page:- Interest is payable monthly on

16 the last day of each month. The lenders

17 reserve the right to vary this rate

18 upwards or downwards at any time in

19 response to any periodic changes in

20 local market conditions.

21 The commitment fee 2% of \$[REDACTED],

22 which is \$[REDACTED] plus 25% G.C.T.

23 or \$[REDACTED] totalling \$[REDACTED]

24 payable upon acceptance of this offer.

25 Under the caption Repayment.

1 A) and (b) with current principal
2 balances of \$ [REDACTED] and
3 \$ [REDACTED] are to be paid out from sale
4 of all the units in the [REDACTED].
5 There is likely to be a shortfall which
6 will be paid out from the sale of the units
7 in the Development 2.
8 C) This is to be paid out from net
9 proceeds of the Development 2 after
10 loans (a) and (b) and (d) have been
11 repaid.
12 Interest is payable monthly on all the
13 loans. In the case of the \$ [REDACTED]
14 facility, provision has been made for funds
15 to be drawn down against the approved
16 facility to cover interest payments.
17 Principal is to be repaid in full from
18 proceeds of selling all units in the
19 Development 2. Mr. Wong Ken, could I just
20 ask one question. On the repayment, items
21 COMM ROSS: (a) and (b) this is a note that says there
22 is likely to be a shortfall which will be
23 paid out of sale of units for the
24
25

Development 2. Does that mean that they were anticipating to make

2 a loss on those developments?
4 DEBTOR 6: If I may answer

that sir, no. What

5 happened is that we are moving into
6 development rapidly so because some of
7 the -- the loan amount. at this point in time
8 was to cover two developments, so there will
9 be a shortfall from Crotona because of the.
10 amount of. money that was. borrowed, but it is
11 going into the Waterloo complex. So there is
12 not a loss really there, it is just that the
13 loan amount was incorporated into the
14 Waterloo complex project.

15
16 Continued.....

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2 MR. WONG KEN:

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I am now referring to Exhibit DEBTOR 6-3 which may be found at pages 13 to 19. This is a Demand Loan for \$[REDACTED]. This letter supercedes all previous commitment letters.

The amount and type of Credit.

Demand Loan for \$[REDACTED].

Demand Loan for \$[REDACTED] and

Demand Loan for - \$[REDACTED].

A total of \$[REDACTED].

The purpose:

(a) To complete the construction of Development 1.

(b) To assist in the purchase of [REDACTED] and service interest for a further five months.

(c) To assist in purchase of Development 2 and to construct 22 apartments, Super Studios and ten two bedroom apartments, service interest and pay professional fees.

The interest rate on Demand Loan:

(a) Fifty-five percent (55%)

(b) Fifty-five percent (55%)

1 (c) Forty-five percent (45%)

2 day of the each moment. The Lenders
3 reserve the right to vary this rate
4 upwards or downwards at any time, in
5 response to any periodic changes in
6 local market conditions.

7 Commitment Fee: Two percent of
8 _____

9 ? 500

10 \$ [REDACTED]. Under the caption Repayment:

11 (a) To be paid out from sale of all the units
12 in the Development 1. There is likely to be
13 a shortfall which will be paid out from the
14 sale of units in the Development 2.

15 (b) Monthly disbursements to be made to
16 principal to service interest. A portion of
17 principal will be paid from the net proceeds
18 of Development 2. A plan to develop [REDACTED]
19 will be tabled no later than January 1996.

20 (c) Monthly disbursements to be made to
21 principal to service interest. Principal to
22 repaid in full from sale proceeds of units
23 which is estimated to be
24

1 \$ [REDACTED]

2 And then it goes on to speak about the
3 security.

4 COMM ROSS: Could you say something about the
5 securities please, Mr. Wong Ken.

6 MR. WONG KEN: The securities for this loan. Number 1.
7 Existing Mortgage for \$ [REDACTED] 0 over
8 [REDACTED] property at [REDACTED]

9 [REDACTED]
10 [REDACTED] registered at volume [REDACTED] Folio
11 [REDACTED].

12 Debenture over the fixed and floating assets
13 of the company held jointly by Horizon
14 Merchant Bank Limited and Horizon Building
15 Society (HBS) stamped to \$[REDACTED]
16 supported by

17 (a) Collateral Fourth legal Mortgage
18 over property situated at [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]. Valued at \$25.0 Million.

(b) Collateral Second Mortgage over
property located at [REDACTED],
registered at Volume [REDACTED] Folio [REDACTED] Valued
at \$20.0 Million subject to first

1 mortgage held by National Commercial
2 Bank Limited for S€, [REDACTED].

3 (c) Collateral First Mortgage over
4 Development 2 valued at \$ [REDACTED] at
5 present with estimated market value of
6 \$ [REDACTED] upon completion of the
7 development.

8 (d). Collateral First Mortgage, documents
9 held in registrable form over No. [REDACTED]
10 [REDACTED] St. Andrew registered at Volume [REDACTED]
11 Folio [REDACTED] and Number [REDACTED],
12 registered at Volume [REDACTED] Folio [REDACTED] with
13 estimated value of \$ [REDACTED].

14 3. Assignment of peril insurance
15 preferably to be replaced through
16 Horizon Insurance Brokers.

17 (a), [REDACTED] to. be insured for a
18 minimum of \$ [REDACTED].

19 (b.) [REDACTED] to be insured
20 :for_ _a minimum-of \$ [REDACTED].

21 (4) Unlimited guarantee of Mr. DEBTOR 6
22 and DEBTOR 6 spouse.

23 (5) Assignment of life insurance on the
24 life of Mr. DEBTOR 6 valued at
25

\$ [REDACTED].

Additional: Page 4 at the top.

(1) Loan Agreement between the borrower and all the lenders in respect of the total lending.

(2) Second Debenture over fixed and floating assets to be held jointly by HMB, HBS, and HLL \$ [REDACTED] Supported by:

(a) Collateral Second Mortgage over Development 2.

(b) Collateral Second Mortgage of [REDACTED] [REDACTED] registered at [REDACTED] [REDACTED] with estimated value of \$ [REDACTED].

(c) Collateral Fifth Mortgage over [REDACTED] [REDACTED], registered at [REDACTED] [REDACTED], valued at \$20,000,000.00 subject to first Mortgage held by National Commercial Bank for \$ [REDACTED]

(3) Assignment to peril insurance preferably to be placed through Horizon Insurance Brokers.

(a) Assignment of peril insurance on

1 ?a:" ██████████ a minimum of \$██████████:

2 (b) ██████████ be insured for.

3 a minimum of \$██████████.

4 (4) Unlimited guarantee of Mr. DEBTOR 6

5 and DEBTOR 6 spouse.

6 COMM. BOGLE: I think we have entered this as Exhibit.

7 DEBTOR 6-3.

8 MR. WONG KEN: Thank you Commissioner.

9 I am at line 18. By September 1995, the

10 ██████████ project was far advanced, but

11 interest rates were climbing and the

12 company was paying as much as 60%. By

13 the time the project was completed in

14 late 1997 we were paying about 64%.

15 DEBTOR 6?

16 A: That is correct, sir.

17 Q: In July 1996 the final sale proceeds of.

18 \$27,793,236.12 from the ██████████

19 complex was paid to Horizon by the

20 company's attorneys-at-Law Messrs.

21 Livingston Alexander & Levy and the

22 mortgage over that complex was

23 discharged.

24 A: That is correct, sir.

25 Q: In September 1996 the company received

1 the final drawdown from Horizon on
2 Paimermo Waterloo Road project. The
3 total drawdown on the project was
4 \$ [REDACTED].

5 A: That is correct, sir.

6 Q: Sales on the [REDACTED] apartments were
7 adversely affected by the rapidly rising
8 mortgage rates offered by banks and
9 mortgage companies to prospective
10 purchasers. Between the months of April
11 1996 to January 1997 only six units in
12 that complex were sold?

13 A: That is correct, sir.

14 Q: From the number of persons enquiring
15 about purchasing apartments at [REDACTED]
16 it was clear to me that the selling
17 price was within the market but that
18 potential purchasers were unable to
19 qualify for mortgages at the rates
20 offered by financial institutions. I
21 discussed this with Horizon, and in
22 about September 1997 the bank offered to
23 purchasers a special mortgage rate of
24 12% for a two-year term.

25 A: That is correct, sir.

1 Q: Paragraph 23. Within five months of that
2 special mortgage rate 22 units were sold
3 at the same selling price previously
4 asked.

5 A: That is correct, sir.

6 Q: On September 30, 1997, the company
7 negotiated a Demand Loan for
8 \$ [REDACTED] from Horizon 'that
9 supercedes all previous commitments'.
10 The purpose of that loan was to
11 consolidate the company's indebtedness
12 at an interest rate of 35%. The loan
13 also contained an amount to complete the
14 [REDACTED] project with disbursements made
15 against DEBTOR 6 Company Limited's Quantity

Surveyor's

16 Certifications... Horizon agreed to waive
17 Commitment Fees and Lender Fees. I will
18 refer to this loan as a consolidation
19 Loan.

20 A: That is correct.

21 Q: Repayment of the loan was to be from the.
22 sale of remaining units at Palermo
23 (Development 2) and also from the
24 sale of ten townhouse units to be

25

developed at [REDACTED].

1 A: That is correct, sir.

2 Q: Interest was serviced directly by
3 deductions from disbursements on
4 DEBTOR 6 Company Limited's progress billing
again

5 ensuring that the company was never
6 delinquent on its loan.

7 A: That is correct.

8 Q: I tender as an exhibit a copy of the
9 Commitment Letter from Horizon, dated
10 September 30, 1997 as DEBTOR 6-4. That may be
11 found Commissioners at pages 20 to 24.

12 This is a Demand Loan for

13 \$ [REDACTED]. It reads:

14 This letter supercedes all previous
15 commitments.

16 We are pleased to inform you that
17 Horizon Merchant Bank Limited (HMBL)
18 Horizon Building Society (HBS) and
19 Horizon Life Limited (HLL) (herein after..
20 referred to as ("Consortium Lenders")
21 have agreed to offer DEBTOR 6 Company Limited
22 Manufacturing Company Limited credit
23 facilities according to the following
24 terms and conditions as well as any

other terms and conditions as my be

embodied in the security documentation:

Amount and type of credit: Demand Loan for

\$ [REDACTED] to be contributed by the

Consortium Lenders in the following manner:

HMB -- \$ [REDACTED].

HBS - \$ [REDACTED].

HLL -- \$ [REDACTED].

For a total of \$ [REDACTED].

Purpose stated: To consolidate
indebtedness.

Term -- Thirty six (36) months. Interest
Rate: Thirty-five percent (35%) Interest is
payable monthly on the last day of each
month. The Consortium Lenders reserve the
right to vary this rate upwards and
downwards at any time in response to any
periodic changes in local market
conditions.

Under the caption Repayment: Interest is to
be paid monthly, Principal to be ... repaid in
full within a period not exceeding 36
months. Principal to be repaid from sale of
remaining 4 units at "[REDACTED]" Development
2 and

1 also from sale of 10 townhouse units to
2 be developed at [REDACTED]. Lump
3 sum payments are to be made from time to
4 time to be applied to principal
5 reduction.

6 You would like to go through the
7 securities, Commissioners?

8 COMM ROSS: I am a little confused with the
9 repayment information. If you could just
10 help with this. It says the sale for
11 units and the sale of units to be
12 developed. Now, I mean, how were those
13 other units which I presume at this
14 point have not yet been built, how would
15 they be financed?

16 A: If I may Commissioner, because of the
17 rapid increase in interest rates we have
18 decided to do the [REDACTED] complex
19 and the [REDACTED] complex because we
20 had already gotten in our building
21 approval and subdivision approval, we
22 were going to be selling lots with a
23 contract to build those units that would
24 reduce our borrowing and based on those
25 deposits that we would be getting we

1 would borrow against those deposits and
2 some of those deposits would then pay
3 down the loan, interim loan but the
4 purchaser would then be making payments
5 as the building progressed.

6 COMM. ROSS: What was the real expectation that the
7 loan could have been retired at this
8 point, \$ [REDACTED] from the sale of
9 the remaining four units plus the ten
10 townhouses?

11 A: Well, it is not just the ten townhouses
12 but the ten townhouses we were looking
13 to sell those units, we were starting at
14 \$ [REDACTED], that would be
15 \$ [REDACTED], a gross income. At the same
16 time we would be doing [REDACTED] which
17 from the outset we would be selling ten of
18 those units as an initial sale at
19 \$18,000,000.00 each, that would bring us a
20 gross of \$118,000,000.00. In and around about
21 six months we would be selling another ten
22 units but not at \$18,000,000.00 but at
23 \$20,000,000.00. That would bring another
24 \$200,000,000.00 gross and we would then

1 at a later date, possibly near to the
2 end of the project, those units, we
3 wouldn't have sold those as land only on

4 a contractable basis, those would be
5 selling as units and at that time we
6 would be asking \$25,000,000.00 each for
7 those 12 units.

8 COMM. ROSS: I see. Thank you sir.

9 MR. WONG KEN: Commissioner, has this Commitment letter
10 dated September. 30, 1997 been entered as
11 Exhibit DEBTOR 6-4?

12 COMM. BOGLE: Now entered.

13 MR. WONG KEN: Thank you Commissioner. I am at line 28.
14 The security given to Horizon in respect
15 of that latest Demand Loan were:

16 (a) Debentures Over the fixed and
17 floating assets of the company:

18 (b) Collateral 2nd mortgage over lands
19 registered at [REDACTED]

20 valued at \$30,000,000.00 - first
21 mortgage to National Commercial Bank for

22 \$[REDACTED].

23 (c) Collateral First Mortgage over
24 residential development at [REDACTED]

25 [REDACTED].

1 (d) Collateral First Mortgage over lands
2 registered Volume [REDACTED] Folio [REDACTED] and [REDACTED]
3 respectively.

4 (e) Unlimited personal guarantees of
5 DEBTOR 6 and DEBTOR 6 spouse.

6 (f) Assignment of life insurance on life
7 of DEBTOR 6.

8 A: That is correct.

9 Q: 29. In 1997 DEBTOR 6 Company Limited was not
in default

10 of its loan obligations to Horizon...

11 MRS. PHILLIPS: Objection. Commissioners, i don't know

12 if I am looking at the correct document

13 but I am looking at the document

14 September 30 1997 and under Existing

15 Security it says: All existing

16 securities issued to date. And in

17 particular it sets out the ones that area.

18 summarized in paragraph 28 and then I

19 see something that says 'additional

20 security to be taken', certainly on the.

21 letter I see that. I am not seeing that

22 in paragraph 28.

23 COMM. BOGLE: Mr.Wong Ken?

24 MR. WONG KEN: Can we read that into the record,

25

Commissioner?

1 COMM, BOGLE: Yes.

2 MR. WONG KEN: Additional Security to be taken:

3 First legal Mortgage to be held by HMBL as

4 lead Lender stamped to cover \$ [REDACTED]

5 over property of approximately 10.3 acres

6 being part of [REDACTED] St. Andrew and

7 registered at [REDACTED]

8 [REDACTED]. This

9 property has a:. market value of

10 \$75,000,000.00.

11 I am grateful to my friend.

12 I am at line 29. In 1997 DEBTOR 6 Company

13 Limited was

14 not in default of its loan obligations

15 to Horizon. The company had several

16 projects on its schedule. of work, and in

17 particular it planned to commence the

18 townhouse complex at [REDACTED] and

19 on the three acres at [REDACTED]

20 [REDACTED] as soon as the [REDACTED] project was

21 completed. DEBTOR 6?

22 A: That is correct, sir.

23 Q: In 1996 I incorporated DEBTOR 6

24 Company Limited (DEBTOR 6 COMPANY). The

25 shareholders were my wife and I.

1 DEBTOR 6 Company was intended to have
2 capacity to provide concrete to
3 DEBTOR 6 Company Limited's projects and as
well to other
4 purchasers. In or around 1996, the
5 supply of cement and concrete was not
6 reliable and I saw that T. Revand could
7 gain a competitive advantage by having a
8 reliable supplier of concrete.
9 DEBTOR 6?
10 A: That is correct, sir.
11 Q: By 1997 the Government of Jamaica had
12 announced that it would make financing
13 available through the National
14 Development Bank of Jamaica (NDB) to
15 companies that qualified?
16 A: That is correct..
17 Q: In November 1997, Horizon Merchant Bank
18 offered credit.. facility of \$[REDACTED]
19 to DEBTOR 6 Company. That loan was negotiated
in__
20 the context that \$[REDACTED] was to
21 be a bridge finance pending NDB funding
22 of a loan to DEBTOR 6 Company.
23 A: That is correct, sir.
24 Q: I tender as an Exhibit a copy of a

25

letter November 10, 1997 from Horizon

1 Merchant Bank Limited to DEBTOR 6 Company
2 Concrete Company Limited as DEBTOR 6-5. That
3 may be found at pages 25 to 28. May that
4 be tendered as an Exhibit, Commissioner?
5 COMM. BOGLE: Exhibit DEBTOR 6-5.
6 MR. WONG KEN: And this is addressed to DEBTOR 6 Company
7 Concrete Company Limited.
8 Re Credit Facility Loan.
9 (a) Demand Loan J\$ [REDACTED].
10 (b) National Development Bank (NDB)
11 J\$ [REDACTED].
12 The amount and type of Credit - Demand
13 Loan.
14 Purpose: This is an interim facility to
15 make deposit on equipment being
16 purchased to be utilized in the project
17 described in (b) below.
18 (b) to be utilized in project which
19 involves repairs to existing equipment,...
20 to purchase additional equipment, to
21 complete refurbishing of properties from.
22 which the project will operate and to
23 provide working capital support for the
24 company to establish a concrete mixing
25 plant.

1 The security offered or required Debentures
 2 over the fixed and floating assets of the
 3 company stamped to cover \$ [REDACTED]
 4 supported by collateral. 1. First legal
 5 Mortgage over property located at [REDACTED]

[REDACTED] and [REDACTED],
 Kingston 5 in the parish of St. Andrew and
 registered at Volume [REDACTED] Folio [REDACTED], (Other
 9 Volume and Folio to. be obtained). This
 10 property has a valuation of \$24.5 million..

11 (ii) Bill of sale over motor vehicles,
 12 concrete mixing equipment, machinery and
 13 other equipment as per detailed attached
 14 list. These are estimated to have a value of
 15 \$35,000,000.00.

16 B. Unlimited Guarantee of DEBTOR 6 Company
 17 Limited Manufacturing Company Limited
 18 supported by collateral second legal
 19 mortgage over property, part of [REDACTED]

[REDACTED], St. Andrew registered at

[REDACTED]. [REDACTED]

[REDACTED]. Stamped to cover the

\$ [REDACTED] subject to first mortgage

24 held by HMB to secure

1 \$[REDACTED] plus interest.

(c) Unlimited guarantee of DEBTOR 6.

(d) Unlimited guarantee of DEBTOR 6
spouse.

(e) Assignment of Peril insurance for a:
minimum face value of \$[REDACTED] over
motor vehicles, concrete mixing equipment
machinery and other equipment preferably to
be placed through Horizon Insurance
Brokers.

(f) Assignment.. of life insurance on the..
life of DEBTOR 6 for a face value of
US\$[REDACTED]. This assignment also
secures in part the present indebtedness of
DEBTOR 6 Company Limited Manufacturing
Company Limited.

On the special conditions.

(a) The interim facility of

..18 \$[REDACTED] will be disbursed upon
'19 receipt by HMB of the securities herein
20 stated. This interim facility will be
21 liquidated with funds to be received from
22 NDB. There will be no other disbursement of
23 any moneys under the
24

1 within facility before receipt of
2 appropriate funding from NOB.

3 (b) The company shall require to execute
4 formal Loan Agreement in respect of the
5 proposed NDB loan.

6 I am at line 34. The unique features of
7 this loan were:

8 (a) The greatly reduced interest rate at
9 17% on a reducing balance and not
10 compounded. _

11 (b) Interest was to be calculated
12 monthly but repaid from the NDB facility
13 when that was funded. So again
14 arrangements were in place so that the
15 company would not be delinquent on its
16 loan with Horizon.

17 (c) Commitment fee was waived.

18 DEBTOR 6?

19 A: That is correct, sir.

20 Q: 35. DEBTOR 6 Company successfully applied to
the

21 : NDB direct loan assistance in the amount
22 of \$ [REDACTED]. The NDB loan
23 facility was approved in May of 1998 to
24 purchase equipment, refurbish property
25 from which the project would operate and

1 to provide working capital support for
2 the company to establish a concrete
3 mixing plant.
4 I tender as an exhibit a copy of the
5 Commitment letter dated 1998 May 12 from.
6 NDB to DEBTOR 6 Company Company
7 Limited. That may be found at pages 29
8 to 43 of the bundle of exhibits.
9 Could that be entered as Exhibit DEBTOR 6-6
10 please?
11 COMM. BOGLE: Pages 29 to?
12 MR. WONG KEN: 29 to 43 sir.
13 COMM. BOGLE: Okay, DEBTOR 6-6.
14 MR. WONG KEN: Thanks sir. This letter of Commitment
15 reads -- it is addressed to Managing
16 Director, DEBTOR 6 Company Limited.
17 COMM. BOGLE: From?
18 MR. WONG KEN: From the National Development Bank of
19 Jamaica Limited..
20 We have approved your application for
21 National Development Bank of Jamaica
22 Limited NDB funding assistance with
23 respect to the project for DEBTOR 6 Company
24 Concrete Company Limited (The Client)
25 subject to the availability of funds.

1 Amount of loan and source of funds: The
2 amount to be lent, advanced or provided by
3 NDB shall be up to a maximum of
4 J\$[REDACTED]. Any cost overruns incurred
- in the implementation and execution of the
Project will be the responsibility of the
Client.

7 The purpose of the loan:

8 The loan shall be provided directly to
9 DEBTOR 6 Company Company Limited with
10 registered office located at [REDACTED]
11 [REDACTED] and
12 project site located at [REDACTED] St.
13 Catherine to be utilized in respect of the.
14 project described hereunder (the.
15 project).

16 All notices in. connection herewith shall be
17 deemed to be properly served if sent by
18 registered mail to the following client. In
19 the. body of the document the. project is
20 described.

21 The interest rate is set at 13% per
22 annum.

23 The loan (or such balance thereof as
24 remains outstanding from time to time)
25

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will carry an interest of 13% per annum
calculated on a 365 days reducing balance
basis.

Provided however, that in the event of
commitment of this Loan or any portion
thereof or on variation of this Letter
of Commitment, National Development Bank. Of
Jamaica shall have the right by notice in
writing to vary or amend the rate of interest
payable.

The Commitment fee is set at 1% plus GCT.

The securities, under the heading:

Repayment of the loan and of all other
moneys becoming due and payable by you to
NDB shall be evidenced by duly executed
Promissory Notes together with specific
securities as follows:

1. Mortgage creating a first charge over
reality in the name of DEBTOR 6 Company
Company Limited located at [REDACTED]
[REDACTED], registered at [REDACTED]
[REDACTED] of the Register Book of Titles.
2. Guarantor's mortgage creating a first

1 charge over realties in the name of DEBTOR
2 6 Company Limited Manufacturing Company
3 Limited located at [REDACTED],
4 St. Andrew registered at [REDACTED]
5 [REDACTED] of the Register Book of
6 Titles.

7 [REDACTED], registered at
8 [REDACTED] of the Register Book of
9 Titles supported by:

10 3. Debenture creating a first charge
11 over fixed and floating assets of DEBTOR

12 6 Company Company Limited
13 present and future.

14 4. Bill of Sale. over machinery and
15 equipment.

16 5. Assignment of Keyman Insurance on the
17 lives of DEBTOR 6 and DEBTOR 6 spouse with
18 face value of [REDACTED].

19 Continued....
20

21 2

22 2

23

24

25

1 All disbursement shall be completed by and
2 be available until 1999 June 30. On
3 compliance with the terms and conditions
4 hereof, and with the terms and conditions
5 as contained in the Security document
6 executed by DEBTOR 6 Company Limited, the
7 loan will be disbursed in accordance with
8 a disbursement schedule and expenditure
9 plan to be agreed

upon by NDB and

11 incorporated herein by reference.

12 The only other item I would like to
13 point the Commission to is on page 6 or
14 number 35 of the document, Expiration
15 Date.

16 COMM. BOGLE: Could you look on the repayment terms on
17 that.

18 Q: I will go through that.

19 Repayment terms,

20 Repayment dates for the loan will be the
21 last working day of each calendar month.

22 The repayment of the loan as to both
23 principal and interest shall be in
24 Jamaican Dollars.

25 The principal is repayable in forty-

1 eight consecutive monthly instalments,
2 commencing twelve months after the first
3 disbursement of NDB funds on behalf of the
4 project. Interest shall be paid monthly
5 commencing the nearest repayment date
6 specified above after the first disbursement
7 of funds on behalf of the project. Interest
8 payments shall be computed on a declining
9 balance basis as the principal is repaid.
10 All payments in respect of this loan
11 shall be made in accordance with the
12 Repayment Schedule accompanying each
13 disbursement and with the repayment
14 terms as set out above.

15 Repayment of all moneys shall be made at NDB's
16 Offices at lie - 15 Oxford Road, Kingston 5
17 or any other place or places designated by
18 the NDB.

19 Expiration Date

20 This commitment will expire unless accepted
21 by you and returned along with the applicable
22 fees to reach the offices of NDB on or before
23 1998 June 15.

24 I am at line 37.

25

1 Among other things the Letter of
2 Commitment provided for:
3 An Expiration Date 1998 June 15;
4 Interest at 13%.
5 Since September 1997, Horizon provided
6 draw-downs on both the DEBTOR 6 Company
Limited
7 Consolidation Loan and on the DEBTOR 6
Company
8 Bridge Finance Loan.
9 DEBTOR 6?
10 A: Yes.
11 Q: DEBTOR 6 Company Limited acted upon the
Consolidation
12 Loan by engaging in its normal
13 commercial activities and did things
14 consistent with being a housing
15 developer.
16 A: Yes.
17 Q: DEBTOR 6 Company acted on the Bridge Finance
18 Loan and subsequently on the NDB
19 Commitment by ordering equipment and
20 making deposits on equipment?
21 A: That is correct.
22 Q: It undertook liabilities and caused

23 securities to be pledged on its behalf.

24 A: That is correct.

25 Q: Based upon the Consolidation Loan and on

1 the Bridge Finance Loan from Horizon and
2 upon the NDB commitment, my wife and I
3 gave guarantees and took on financial
4 obligations in support of DEBTOR 6 Company
Limited and

5 DEBTOR 6 Company.

6 A: That is correct.

7 Q: On or about November 1997 Horizon was
8 taken over by FINSAC. At that time
9 neither DEBTOR 6 Company Limited nor DEBTOR
6 Company were in

10 arrears of their obligations to Horizon.

11 A: Correct.

12 Q: At that time Horizon was still
13 contractually obligated to both DEBTOR 6
Company Limited

14 and DEBTOR 6 Company for the following:

15 a) To provide draw-downs to DEBTOR 6 Company
Limited;

16 b) To provide draw-downs to DEBTOR 6 Company;

17 c) To provide documents to NDB so that
18 the NDB could perfect its security

19 package and disburse funds to DEBTOR 6
Company.

20 A: That is correct.

21 Q: I was not notified that FINSAC had taken
22 over Horizon. I found this out when I
23 went to the bank in the normal course of
24 business, whereupon I learned that both
25 Mr. Beckford and Mr. Scott had been

1 relieved of their positions in the bank.

2 I was introduced to Deryck Rose who told,
3 me he represented FINSAC and would be
4 taking over the operations of the bank.

5 A: Yes, that is correct.

6 Q: Immediately that FINSAC took over Horizon
7 all of DEBTOR 6 Company Limited's and DEBTOR
8 6 Company's commercial activities were
thrown into chaos. We were not able to receive
10' draw downs on the presentation of Quantity
11 Surveyor's Certificates. DEBTOR 6 Company was
12 not able to get funds for the repair and
13 refurbishment of its premises. After many
meetings and after the passage of
15 many weeks Citizen's Bank issued cheques.
16 on behalf of DEBTOR 6 Company to pay the
17 outstanding amounts due on the equipment
18 and for shipping and related costs.
19 These payments came about because the
20 vendor of the equipment threatened to
21 cancel the sale and to forfeit the
22 deposits.
23 Unlike other companies whose accounts
24 were taken over by FINSAC, we were not
25 taken over by FINSAC but our bank was.

1 A: That is correct.

2 Q: At the time that Horizon was taken over
3 by FINSAC the \$[REDACTED] Consolidation
4 Loan was not fully disbursed?

5 A: That is correct.

6 Q: At the time that Horizon was taken over
7 by FINSAC receipts from the sale of
8 apartments were still being paid to
9 Horizon.

10 A: That is correct.

11 Q: Prior to FINSAC take-over of the bank,
12 when dealing with Horizon, on the
13 completion of a sale of property Trevarnd.
14 would receive a statement from our
15 attorney advising us how the proceeds of
16 the sale were accounted for. Horizon
17 would then acknowledge receipt of this
18 in writing showing how funds received
19 was allocated to principal and interest
20 and balance on our account?

21 A: That is correct....

22 Q: Also Horizon would regularly send us
23 letters advising of increases and
24 reductions in interest rates.

25 A: That is correct, sir.

1 Q: At the time that Horizon was taken over
2 by FINSAC approximately 20 apartments in
3 the Palermo complex were under contract.
4 Those contracts were completed after the
5 FINSAC take-over and DEBTOR 6 Company

Limited has not

6 received any accounting of the proceeds.
7 of sale. I estimate from the proceeds
8 of sale from the [REDACTED], a total of
9 \$[REDACTED] was repaid on the
10 Consolidation Loan.

11 A: That is correct, sir.

12 Q: We made numerous verbal requests for
13 information in respect of the sale
14 proceeds but we did not receive any
15 information to. those requests.

16 A: That is correct.

17 Q: On November 4 1998, DEBTOR 6 Company Limited
wrote to

18 FINSAC, attention Mr. Rose, requesting
19 information on .25 apartments for which
20 FINSAC received the proceeds of sale.

21 A: That is correct.

22 Q: I tender as an exhibit the copy of a
23 letter from DEBTOR 6 Company Limited

Manufacturing

24

Company Limited to FINSAC Limited dated

25

November 4, 1998 as DEBTOR 6-7. That can be

found at Page 44 of the bundle of exhibits
Commissioners. It's on the letter head of
the DEBTOR 6 Company Limited Manufacturing
Company Limited, it's actually addressed to
FINSAC Limited.

Attention Mr. Deryck Rose,

Re: [REDACTED]
[REDACTED]

We are requesting the following:

How the sale proceeds of apartments,
two, three, eleven, twenty-four,
twenty-seven, twenty-six, twenty-nine,
thirty, thirty-one, thirty-two was
allocated. The amounts applied to
principal and interest and the dates
these were done.

2. A copy of each sale agreement for
apartments one, four, five, six, seven,
eight, nine, ten, twelve, thirteen,
fourteen, fifteen, sixteen, seventeen,
twenty, twenty-one, twenty-two, twenty-
three, twenty-five, twenty-eight. Sale
proceeds and allocation of funds to
interest and principal. These were a part
of a special 12% interest rate

mortgage given by Horizon Bank. The
1 agreements were prepared by Livingston,
Alexander & Levy and sent to Horizon to be
signed by DEBTOR 6 Company Limited Limited.

4 However after signing, in due course we
5 should have received copies which we did
6 not.

7 3. Apartment 18 and 19 were retained by DEBTOR
8 6 Company Limited Limited so there are no
9 agreements, but we need to know the proceeds
10 received and how it was allocated.

11
12 Kindly let us have this at your very
13 earliest as it, was requested on August 12,
14 1998 from Richard Blake of Horizon Merchant
15 Bank limited and the auditors now need it
16 urgently.

17 Signed DEBTOR 6 spouse.

18 Commissioners, has that been entered as
DEBTOR 6-7?

20 COMM. BOGLE:
21 MR. WONG KEN:

No.
Could we do that please?

22 COMM. BOGLE:

23 So entered and on that note, could we
24 have the usual break of fifteen minutes.
COFFEE BREAK

25

1 ON RESUMPTION:

2 MR. WONG KEN: At line 54, DEBTOR 6 Company Limited did not
receive a

3 reply to its letter of November 4, 1998?

4 A: That is correct.

Q: Since November 4, 1998, until August 1999, I attended
countless meetings with representatives of FINSAC and very
7 often requested the information set out in our letter of
November 4, 1998. I believe that we did write to FINSAC during
9 that: period again requesting information but I do not have
copies of those further letters?

11 14 A: That is correct.

12 15 Q: I tender as an exhibit a copy of the
16 letter dated August 29, 1999 from
17 DEBTOR 6 Company Limited to FINSAC, attention
Miss

18 Suzette Campbell again requesting
19 information on the sale proceeds of the
20 same apartments mentioned in our letter
21 of November 4, 1998, plus. others?

22 A: Yes, that is correct, sir.

23 COMM. ROSS: Sorry, could I ask DEBTOR 6 if he
24 could give us some idea as to the
25 subject or subjects of the meetings you

1 mentioned here? Was Horizon or were
2 demands being made for payments, what
3 was the subject of those meetings?
4 A: Okay sir, there was no demand requested
5 from Horizon, from us at any time during
6 that. period. What we were anxious to do
7 because when we realized that Horizon
8 was taken over by FINSAC we were still
9 in the mode of normal operation. At that
10 time we had to get funds through
11 National Commercial Bank because we were
12 not able to get funds through FINSAC at
13 the time. Well, at that time FINSAC, but
14 we were still under the umbrella of
15 Horizon Merchant Bank. Those meetings
16 were held primarily to resolve my
17 situation because here it is we have a
18 commitment from NDB where the days are
19 going, there is an expiry. date on it, we
20 are not able to resolve the situation by
21 them giving those collaterals over to
22 NDB for them to perfect that loan so we
23 would move on it. We had equipment on
24 the wharf that was accruing storage, as
25 a matter of fact we paid over \$2 million

1 in storage for equipment on the wharf
2 and all of those things combined were
3 sitting for days and days, sometimes up
4 to 9 o'clock we were having meetings
5 trying to resolve the situation but
6 Deryck Rose, his hands, as he would say
7 most times, my hands are tied, I can't
8 do anything, so we were just there
9 meandering, really not achieving
10 anything.

11 COMM. BOGLE: Okay Mr. Wong Ken.

12 MR. WONG KEN: At line 56. I tender as an exhibit a
13 copy of a letter dated August 29, 1999
14 from DEBTOR 6 Company Limited to FINSAC,
attention

15 Suzette Campbell again requesting
16 information on the sale proceeds of the
17 same apartments mentioned in our letter
18 of November 4, 1998, plus others.
19 That letter may be found at page 45 in
20 the bundle of exhibits.

21 COMM. BOGLE: Entered as DEBTOR 6-8.

22 Q: This is on the letter head of DEBTOR 6
Company Limited

23 Manufacturing Company Limited, addressed

24

to FINSAC Limited.

25

Attention Miss Suzette Campbell

Re: [REDACTED] - Development

2

We are requesting the following:

1. How the sale proceeds of apartments 1
- 32 was allocated. The amounts applied to
principal and interest and the dates these
were done.

2. A copy of each sale agreement for
apartments one, four, five, six, seven,
eight, nine, ten, twelve, thirteen,
fourteen, fifteen, sixteen, seventeen,
twenty, twenty-one, twenty-two, twenty-
three, twenty-five, twenty-eight. Sale
proceeds and allocation of funds to interest
at principal. These were a part of a special
12% interest rate mortgage given by Horizon
Bank. The agreements were prepared by
Livingston, Alexander & Levy, and sent to
Horizon to be signed by DEBTOR 6 Company
Limited Limited and vendor. However after
signing, in due course we should have
received copies of these agreements which we
did not.

3. Apartments 18 and 19 were retained by
DEBTOR 6 Company Limited Limited so there are
no

1 agreements, but we would need to know
2 the proceeds received and how it was
3 allocated.

4 Kindly let us have this at your very
5 earliest as it was requested on August
6 12, 1998 from Richard Blake of Horizon
7 Merchant Bank Limited, and again on
8 November 4, 1998. from Deryck Rose. Your
9 prompt response is appreciated as these
10 are urgently needed by our auditors.
11 COMM. BOGLE: DEBTOR 6, during your meeting with 12

13
units with them?

14 A: Well, at that time -- during that time
15 sir, Commissioner, we weren't actually
16 meeting with FINSAC per se, we were
17 still dealing with Horizon Merchant Bank
18 as the entity we were dealing with, not
19 FINSAC.

20 COMM. BOGLE: So therefore, to understand clearly, at
21 paragraph 55 you said you had countless
22 meetings with representatives of FINSAC,
23 that is what you said here, I am trying
24 to find out here if during those
25 meetings you discussed these units with

1 them?

2 A: Yes, definitely.

3 COMM. BOGLE: What results you got from them, what
4 were they saying at the time?

5 A: Meeting with Deryck Rose we were told
6 that we will be getting those
7 information and we kept hearing that we
8 will get them, we will get them and up
9 to today we have not gotten those issues
10 resolved, they are still out there, we
11 have no idea at this point in time as we
12 sit here where those moneys went and how
13 they were disbursed. We know they were
14 collected but we don't know how they
15 were allocated.

16 COMM. ROSS: Could I ask further, were you aware or
17 was it a situation that interest was
18 accruing, interest was continuing to
19 accrue on the loan during this period,
20 was that position every made clear to
21 you one way or the other?

22 A: As I stated, again I would assume that
23 interest would be accruing and I had
24 made that point in meetings. As a
25 matter of fact at some point in time

1 later on you will see where we have actually
2 gone on to say, could you cut this off at this
3 period because we see ourselves going
4 nowhere, we can't go on with our lives, we
5 have personal guarantee, myself and my wife,
6 we have absolutely nothing in terms of
7 collaterals because we had so many
8 commitments to our business that we didn't
9 have huge CDs set aside because we couldn't
10 do. that because we were in a high interest
11 rate environment where we decided we were
12 going to do anything, I sold my house prior
13 to this to reduce the debt, but you know, we
14 actually did not get any benefit from it,
15 because everything we owned at that point in
16 time was tied up with Horizon Merchant Bank.
17 We went in several meetings to say let us
18 start [REDACTED] project, we could gain a
19 profit of [REDACTED] project of over \$250
20 million and that is a conservative figure,
21 okay. I do developments as a contractor where
22 I own all my equipment, 1 tender nothing,
23
24
25

1 everybody works for me at a salary, I
2 don't have no big contractor that my
3 overhead -- I don't have a big office
4 where my overhead is high, I mean I am
5 not carrying a lot of load, so I am able
6 to maneuver even in a high interest rate
7 environment, I was still performing and
8 making money. The high interest rate
9 period for me, yes, it was a problem,
10 but if we borrowed [REDACTED]
11 [REDACTED], it's not money you draw down at.
12 one time, it's over a period, so how we.
13 calculated it,. at the time of when we
14 have most of the draw-down we will be
15 then selling the units and money would
16 be coming in so it would offset that
17 situation but our hands were tied when
18 FINSAC walked into Horizon and they
19 stopped, and I. know now they stopped
20 operating as a bank and we were just
21 there in limbo, nothing happening.

22 MR. WONG KEN: Commissioner I..just want to make sure
23 that DEBTOR 6-8 has been entered.
24 COMM. BOGLE: So entered.

25 MR. WONG KEN: At line 57...

1 COMM. ROSS: So Mr. Wong Ken, is page 46 a part of
2 that letter?
3 MR. WONG KEN: DEBTOR 6-8 comprises 45 and 46. Page 57.
4 COMM. BOGLE: Paragraph 57.
5 MR. WONG KEN: At paragraph 57, I am sorry.
6 I tender as an exhibit a letter dated
7 September 15, 1999 from FINSAC to
8 DEBTOR 6 Company Limited enclosing copies of
16 sale
9 agreements. That can be found at pages
10 47 and 48 of the exhibits. Could that
11 be entered as DEBTOR 6-9.
12 COMM. BOGLE: So entered.
13 MR. WONG KEN: Thank you. And on the letter head of
14 FINSAC Limited., addressed to DEBTOR 6
Company Limited
15 Manufacturing Company Limited, September
16 15, 1999.
17 Attention DEBTOR 6 spouse
18 Re: [REDACTED] Apartments.
19 We refer to your letter dated August 29,
20 1999 and enclose Agreements of Sale for.:
21 the following:
22 [REDACTED]
23 DEBTOR 6 spouse

24

DEBTOR 6

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] And

on page 2;

The other information requested will be
forwarded to you at a later date,

Yours truly,

Suzette Campbell.

Line 58.

No

other information was

provided and no other response to our
inquiries was ever received from FINSAC.

A: That is correct, sir.

Q: Part of Horizon's obligation to Trevan.d
was that the title for the [REDACTED]
property was to be given to NDB along

25

with a Bill of Sale over the equipment

1 and second mortgage over the [REDACTED]
2 property to perfect the NDB security.

3 A: That is correct.

4 Q: Under the management of FINSAC, Horizon
5 breached its obligation to DEBTOR 6

Companyby

6 failing to provide the said documents to
7 NDB.

8 A: That is correct..

9 Q: In the many meetings that I had with
10 Deryck Rose and/or Audrey Robinson I
11 made them aware of the NDB loan and the
12 obligations that Horizon had to fulfill.
13 so DEBTOR 6 Companycould take advantage of
the
14 NDB facility?

15 A: That is correct.

16 Q: I warned them that the NDB facility was
17 going to expire and we would lose the
18 facility if they did not provide the
19 required security as agreed with
20 Horizon.

21 A: That is correct, sir.

22 Q: I tender as an exhibit a copy of a
25 Limited as DEBTOR 6-10, and tha mayb found
a

23 letter dated 03 May, 1999 from NDB to
24 DEBTOR 6/DEBTOR 6 Company Company

25
a

Limited as DEBTOR 6-10, and tha mayb found

1 page 49 of the exhibit bundle.

2 COMM. ROSS: Mr. Wong Ken, I am sorry to take you
3 back, but, DEBTOR 6-9 refers to enclosures,
4 sale agreements, so what I would like to
5 ask DEBTOR 6 is whether this
6 information allowed or was accompanied
7 by financial information, in other
8 words, did this provide any of the
9 accounting in terms of funds received
10 that you were asking for?

11 A: All we got sit,, were copies of the sale.
12 agreements, copies of the sale
13 agreements only, no accounting, nothing.

14 COMM. ROSS: Was there any indication that these
15 agreements had. been completed, sale
16 agreements were completed?

17 A: People were occupying the units so
18 obviously the sales would have been
19 completed. .

20 COMM. ROSS: What I am asking, did FINSAC give an
21 indication of that, I presume the sale
22 agreements would have had the amount
23 paid for each apartment.

24 A: We did not have a problem with the
25 amount that was paid, what we wanted,

1 provision of loan funds in the amount of
2 J\$60 million to DEBTOR 6 Company
3 Company Limited. The Expiration Date
4 for acceptance of the Commitment was 15
5 June, 1998.
6 We now formally advise that the loan has
7 been cancelled.
8 Line 64;
9 By May 1999 Mr. Ewart Scott wrote to
10 FINSAC on behalf DEBTOR 6 Company Limited and
DEBTOR 6 Company.

11 And in that letter he sets out:
12 a) FINSAC's claim that we owed them
13 [REDACTED] Of that he pointed
14 that an amount of \$349,784 arose from
15 our indebtedness to Century National
16 Bank, in circumstances that we had never
17 borrowed any money from Century National
18 Bank.
19 b) That we had assets appraised at
20 \$192,000,000.00.
21 c) That we proposed a settlement of
22 indebtedness by way of FINSAC taking the
23 assets of \$192,000,000 and forgiving the
24 remainder of approximately \$11 million?

25

A:

That is correct.

1 Q: I tender as an exhibit a copy of a
2 letter dated May 12, 1999 from Ewart
3 Scott to FINSAC, attention Audrey 4
5 Robinson as TD11 and that maybe found at
pages 50 to 52 of the bundle. So entered
6 sir?
7 COMM. BOGLE: Yes, sir.
8 COMM. ROSS: Could I just ask here again, I had asked
9 earlier whether FINSAC had made a demand
10 for payment. This letter refers to the
11 claims, presumably by May 1999 some
12 statements of debt owing or some claim
13 had been made on you, is that correct?
14 A: What we got, sir, was a statement --
15 well a lump sum figure would be given to
16 us with no clear indication as to how it
17 was arrived at or what, so we accepted
18 the figure ---- well we looked at the
19 figure and we said to ourselves well,
20 you know we might as well try to end
21 this situation hence we asked them to
22 hold the assets that we have and we walk
23 away with our sanity.
24 COMM. BOGLE: Do you have any of those communications
25 that you received from FINSAC?

1 MR. GOFFE: I think it was submitted to the
2 Commissioners; July 17, 2009. 3
continued...

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2 COMM BOGLE: Submitted by?

3 Q: By DEBTOR 6.

4 MR. WONG KEN: I wonder if I might be excused for a

5 short while.

6 MRS. PHILLIPS: We received it on the 23rd of November,

7 2010.

8 COMM BOGLE: We will take a short recess.

9 (SHORT RECESS)

10 (RESUMPTION)

11 COMM BOGLE: We resume after that short recess.

12 MR. WONG KEN: We were at line sixty-five and I had

13 asked that the letter dated May 12, 1999

14 from Mr. Ewart Scott to FINSAC be

15 admitted as DEBTOR 6-11. That, Commissioner,

16 may be found at pages 50 to 52.

17 DEBTOR 6, you have that letter in

18 front of you?

19 A: Yes.

20 Q: Do you see that highlight, that blocked

21 out part?

22 A: It is not legible, I am not able to read

23 from it.

24 Q: I can. The question is, was that made by

25 your staff or by yourself?

1 A: Yes, my wife.

2 Q: This letter is addressed to:

3 **FINSAC**

4 **Attention: Miss Audrey Robinson.**

5 **Re [REDACTED] Group- Loans**

6 **My clients, DEBTOR 6 and DEBTOR 6 spouse of**

7 **DEBTOR 6 Company Limited Manufacturing**

Company LDEBTOR 6-. , and

8 **DEBTOR 6 Company Company LDEBTOR 6-, owe by**

9 **your figures, as at November 30, 1998 a**

10 **total of [REDACTED] plus interest.**

11 **An immaterial amount of [REDACTED] is**

12 **included as debt owing to Century**

13 **National Bank, however I am advised by**

14 **my clients that they are not aware of**

15 **the debt and had no dealing with this**

16 **bank at any time.**

17 **The figure of [REDACTED] plus**

18 **interest is the result of a total**

19 **borrowing by my clients of \$142 million**

20 **arrived at as follows:**

21 **DEBTOR 6 Company-Equipment & Plant -**

22 **[REDACTED].**

23 **DEBTOR 6 Company Limited Mfg. Co. [REDACTED]**

[REDACTED]

24

[REDACTED].

25
- \$17

DEBTOR 6 Company Limited Mfg. Co. - [REDACTED]

million, total [REDACTED]

Please note that since the drawdown of [REDACTED] a total of \$70 million has been repaid towards the debt from the sale proceeds of [REDACTED] (22 x 1 b/r-[REDACTED]; 3x3 b/r: [REDACTED]).

In fact, the total loan (except the \$[REDACTED] for DEBTOR 6 Company) would have been completely repaid from the sale of [REDACTED] had these units been sold in the projected time.

At the beginning of the project in 1996, the rate of interest was 38%. This subsequently moved to 35%. At that time the projected sale price for a 1 bedroom unit was \$2.2 million and \$4.1 million for a 2 bedroom unit.

Shortly after the 3% drop in interest rate and while still under construction, the rate moved up to 45%. It steadily increased and was 68% by the time construction was completed in 1997. To compensate for the high interest rate, the Company had to adjust the prices of the units upward. This moved the units

1 out of their target market and created a major
2 problem, as sales were slow. As the units
3 were not selling and there were early warning
4 signs of more problems, Horizon Building
5 Society engineered a special 12% rate of
6 interest (from 21%) for 2 years. In a matter
7 of 3 months thirteen (13) 1 bedroom units at
8 \$3.1 million each and three (3) 2 bedroom
9 units at \$6.0 million each were sold. When
10 this period for the special rate had expired
11 the Donees were left with seven (7) 2 bedroom
12 units. After applying the proceeds of the
13 sale to the debt, they were still left with
14 an outstanding balance of \$205 million plus
15 interest. One can understand the difficulty
16 they faced after repaying a substantial
17 amount of the debt. On the one hand, the
18 interest was accumulating rapidly while on
19 the other, the properties that should have
20 been sold to repay the debt were rapidly
21 declining in value. The state of the economy
22 and the lack of
23
24
25

1 demand for prime real estate have left the
2 3 [REDACTED] with no option but to bring the
4 5 situation to a close.

6 My clients own the following assets that are
7 mortgaged to this debt:

8 VALUATION

9 [REDACTED] {1 acre with sub-division
10 and building approval for 10
11 townhouses)- \$24,000,000

12 [REDACTED] (3 acres with
13 sub-division/building approval for 32
14 semi-detached townhouses) - \$40,000,000

15 [REDACTED] Jacks Hill (10 1/2 acres with
16 sub-division for 16 lots)\$65,000.00
17 Retirement Road (1 acre with building
18 approval for 7 warehouses, 7 shops and 7.
19 small storage areas) \$24,500.000

20 [REDACTED] (7x2b/r) -
21 \$38,500.00. Total: \$192,000,000.

22 The cost for preliminary work,
23 surveyors/architect/engineer/geologist
24 and other technical services will not be
25 recoverable unless these properties are
developed.

1 My clients would like to start
2 rebuilding their lives and view the
3 operation of DEBTOR 6 Company Company as
4 the way forward. However, a further . \$17
5 million is needed to provide
6 working capital requirements for the
7 Company. With your intervention we had
8 approached the NDB and NIBJ for funding to
9 mobilize the Company, as you were not in a
10 position to make the funds available.
11 However we were unsuccessful there. We
12 were told by NIBJ that they were not in
13 a position at the time to make a
14 commitment. Recently the NDB advised us
15 that. they have canceled the approved
16 facility as the time had expired.
17 DEBTOR 6 Company Limited LDEBTOR 6-.
18 spent some twenty (20) years in acquiring
19 the properties named and had planned to
20 develop them over time. However, in order
21 to enable DEBTOR 6 Company Company to
22 seek additional funding we are proposing
23 the following:
24 The properties valuing \$192 million be
25

1 sold and the proceeds applied to the debt. Any
2 balance remaining to be waived in
3 consideration of the amount of the debt that
4 is accrued interest. Resulting from the
5 above, my clients will be left with the assets
6 of DEBTOR 6 Company Company. They will then
7 be able to seek the required funding to get
8 that Company operating.

9 We ask that you seriously consider this
10 proposal and respond at your earliest
11 convenience.

12 Signed: Ewart E. Scott

14 And at Item 66: I
tender as an exhibit

15 a copy of a letter dated October 4,
16 1999, signed by Suzette Campbell.
17 Credit Manager, rejecting the offer
18 and informing us that they would take.
19 steps to protect their interest.

20 A: That is correct.

21 COMM ROSS: I would like to ask whether- I am a little
22 bit confused. Did DEBTOR 6 accept the figure
23 of \$205 million as being the debt owed? I am
24 not clear from Mr. Scott's letter as to
whether they

1 accepted that.

2 A: We had not accepted it, but in the
3 interest of stopping the accrual of
4 interest, we asked that they signed off
5 at that period, so we would have a
6 stoppage of interest accruing because at
7 this point we still had no idea as to
8 where all proceeds went.

9 Q: Could the letter of October 4, 1999,
10 signed by Suzette Campbell, addressed to
11 Mr. Ewart Scott be entered as DEBTOR 6-12
12 please?

13 COMM BOGLE: Yes.

14 MR. WONG KEN: The letter reads:
15 We refer to your letter dated May 12,
16 1999 and advise that your proposal was
17 not found to be acceptable.
18 You would appreciate that over the past
19 months our officers have facilitated
20 numerous meetings with your client and
21 yourself to come to an amicable
22 solution.

23 Based on the recent rejection of your
24 proposal on behalf of subject's account,
25 we now have to take action to protect

1 our interest.

2 A: And if I may, sir, at this time, this is

3 to protect the interest of FINSAC as is

4 stated. We have made several submissions

5 to protect our interest, and their

6 interest. That was totally ignored.

7 COMM BOGLE: But were those proposals in writing

8 apart from this one from Mr. Scott,

9 could you tell us?

10 A: There were some in writing, but most of

11 those are in sit-down meetings, ninety

12 percent were in sit-down meetings where

13 we sat down and made proposals that were

14 done with Audrey Robinson, which she

15 made notes and. took it to our Board of

16 Directors for FINSAC.

17 MR. WONG KEN: DEBTOR 6, where did those meetings

18 take place?

19 A: Those meetings took place on Trinidad

20 Terrace where the original FINSAC office.

21 was at the time. There were two

22 offices, one on either corner, I think,

23 it is Trinidad Terrace -- my memory is

24 not so...

25 COMM BOGLE: It was the offices of FINSAC?

1 A: The offices of FINSAC, yes.

2 MR. WONG KEN: And was that where all the meetings took

3 place?

4 A: Except for the one--on--one meeting with

5 Deryck Rose at Horizon office, when

6 their office was at the same place at

7 the Towers, New Kingston.

8 The meeting with Audrey Robinson was at

9 the FINSAC office.

10 Q: At the time was, Horizon still operating?

11 A: Well, operating,, I am not sure because

12 there was chaos there. I mean, they were

13 not operating as a bank where you could

14 go in and thing, I think it was more

15 sort of wrapping up of whatever was

16 there to wrap up.

17 COMM. ROSS: DEBTOR 6, do you have any copy of a

18 demand that was made from FINSAC? I am

19 still not clear as to what FINSAC was

20 demanding of you. Did they give you

21 any ultimatum as to how much you should .

22 pay and what time? All we have is your

23 proposal but we. still don't know what

24 they were demanding.

25 A: Whatever demand was made in writing --

1 2 well, statements were sent to me that I could
3 4 not make head or tail of because
5 6 we were not able to accept or deny those
7 8 figures because of where they were coming from
9 and how they were arrived at, we had no clue,
10 but formal demand, I think, from memory
11 possibly was made but my argument to them was
12 that they have not yet proved to me my
13 indebtedness in any substantial way where I
14 could agree, so hence, when the loan was sold
15 to Joslin & Company they asked that I sign off
16 for US\$5M...I told them that I was unable to
17 do that because I was still awaiting proof of
18 my indebtedness and I left it there.:
19 I had a couple of meetings with Joslin and I
20 just left. everything there because.. we could
21 not pursue this because we don't have the
22 funds to pursue it. So we were, at that time,
23 pressing for this Enquiry because we could not
24 afford attorneys to represent us. So this is
25 why we are here at the Enquiry to bring out
some of the injustices that were

1 meted out especially -- well, I for one,
2 you know. That was it.

3 COMM. ROSS: Could I ask a more specific question.
4 Were you being asked to pay principal
5 plus interest going up to the date of
6 settlement?

7 A: That was the case, sir.

8 COMM ROSS: Was that the approach that FINSAC was
9 taking?

10 A: Yes, sir. But countless times we told
11 them that we had no income because all
12 our properties were under their control.,.
13 they had the control, we could not go
14 out and seek finances to do a
15 development, we could not advertise
16 developments. We had a full page ad for
17 three developments, [REDACTED] which was at
18 the time completed, we had [REDACTED]
19 and we had [REDACTED], but at that point
20 we had to cancel those developments
21 because we could not sell properties
22 that were held by FINSAC and we had no
23 time as to when it would be resolved, so
24 everything went dead at that point.

25 MR. WONG KEN: Thank you, Commissioner.

1 I am at line 67.
2 "What Mr. Scott 's letter did not say is
3 that it was FINSAC's actions alone that
4 created the irretrievable financial
5 problems for DEBTOR 6 Company and DEBTOR 6
Company Limited".

6 A: That is correct, sir.
7 Q: "After FINSAC took over Horizon I tried
8 desperately to make other banking
9 arrangements for DEBTOR 6 Company Limited
and DEBTOR 6 Company

10 but FINSAC held all the assets of those.
11 companies plus the personal guarantees
12 of me and my wife. Every proposal made
13 to FINSAC was rejected or simply
14 ignored".

15 A: That is correct, sir.

16 Q: "Another proposal
18 made to FINSAC to

17 liquidate our
20 debts was through the development of the
21 property at [REDACTED]
22 [REDACTED] for 10 luxury town house units and
23 78-80 Barbican Road for 32 semi-detached
24 town house units. FINSAC rejected the

proposal, only to dispose of the Barbican Road property for \$25.5 million, less than half of its appraised

1 value".

2 A: That is correct, sir.

3 Q: "Without banking facility..."

4 COMM BOGLE: Just a minute, sir. Just one question.

5 You said: "Less than half of its
6 appraised value", what was the appraised
7 value? How did you arrive at the
8 appraised value?

9 A: I think we have a valuation somewhere
10 but basically the value we placed on --
11 we had a building approval -- well, the
12 property, before we got building
13 approval and sub-division approval, was.
14 in excess of \$30M. Now that we have had
15 sub-division approval and building
16 approval, it had increased considerably
17 because of that added value. Each of those
18 lots, each townhouse lot could have been
19 sold... in my estimation, for \$3M minimum.
20 A. a matter of fact, I can look at the
21 records because the people who purchased the
22 sub-division actually sold my sub-division
23 approval and sold 16 of those, that is half
24 of it, for I think, about twice what they
paid for

1 the entire land months latter.

2 COMM ROSS: Could I ask one other question.

3 DEBTOR 6, were you afforded an

4 opportunity to take part in the quote

5 unquote, 'window of opportunity' -- did

6 not know it exist, sir?

7 A: The 'window of opportunity' I heard of

8 it the first time at the Enquiry.

9 The amount of meetings, if there was

10 ever a 'window of opportunity', Miss

11 Suzette Campbell clearly stated here

12 that our request was denied. We were

13 simply asking that they keep whatever

14 real estate that they had, leave us with

15 DEBTOR 6 Company so that we could start

16 afresh and that was totally rejected.

17 What else could we do? I mean what can

18 we offer, our lives, our bodies? I mean, .

19 this is my life, this is my life. I have

20 my children. (crying)

21 COMM BOGLE: Can we just have a ten minute recess? In

22 view of this can we break for lunch? We

23 will break for lunch and we will meet

24 again at 1:30.

25 Continued....

1 On resumption at 1:30 p.m.

2 CHAIRMAN: Good afternoon. This Enquiry is now back in
3 session.

4 DEBTOR 6, please remember you are under
5 oath.

6 Mr. Wong Ken?

7 A : Yes, sir.

8 CHAIRMAN: Just before you start, Mr. Wong Ken.
9 Counsel, we did not get your names this
10 morning. Can you name who you represent now.
11 I know I saw you but I omitted to ask you.
12 Dave Garcia, representing Pattrick.

13 MR. GARCIA: Hilton.

14 Mr. Gaffe?

15 CHAIRMAN: Gavin Gaffe representing Jamaican:.

16 MR. GOFFE: Redevelopment Foundation.
17 Thank you.

18 CHAIRMAN: Yes, Mr. Wong Ken.
19 Thank you sir. I believe we were at line 69.

20 MR. WONG KEN: Yes, go ahead.
21 69. Another proposal made to FINSAC to
22 CHAIRMAN: liquidate our debts was through the
23 MR. WONG KEN: development of the property at ■
24
25

[REDACTED] for 10

2 luxury townhouse units and [REDACTED]
3 [REDACTED] for 32 semi-detached
4 townhouse units. FINSAC rejected the
5 proposal, only to dispose of the
6 [REDACTED] property for \$25.5
7 million, less than half of its appraised
8 value.

9 That is correct sir.

10 Q: 70. Without banking facilities DEBTOR 6
Company Limited

11 and DEBTOR 6 Company were unable to continue
12 their businesses. Our first mortgage
13 with National Commercial Bank Limited
14 over the [REDACTED] property went into
15 arrears and that bank sold [REDACTED]
16 property under Powers of Sale in or
17 about August 1999. It used the proceeds
18 of sale to clear its mortgage and
19 remitted the balance to Finsac.

20 A: That is correct, sir.

21 COMM ROSS: Sorry. Do we have any information as to
22 what that balance was?
23 MR. WONG KEN: It is coming in the next line,

24 Commissioner.

25

We have not received an accounting from

1 2 FINSAC as to how those moneys were applied
3 4 against the loan. We did receive a receipt
5 6 from Refin Trust Limited acknowledging that
7 an amount of \$ [REDACTED] was paid to it by
National Commercial Bank Limited. Up to that
point I had no knowledge of who
8 Refin Trust was or.
why it was writing to
9 me.
10 A: That is correct sir.
11 Q: Upon the sale of [REDACTED] Property
12 DEBTOR 6 Company Limited had no further debt
to National
13 Commercial Bank, yet Dennis Joslin
14 Jamaica Limited would in 2002 make a
15 claim for that indebtedness?
16 A: That is correct, sir.
17 Q: In summary when FINSAC took over
18 Horizon.
19 a) DEBTOR 6 Company Limited was a vibrant
company
20 involved in completing the [REDACTED]
21 Apartment complex. Finsac received the
22 bulk of the sale proceeds of
23 approximately 30 units without giving

24 any accounting therefor. DEBTOR 6?

25 A: That's correct, sir.

1 (2:
default of its

2 finaicial obligations to Horizon.

3 A: That is correct, sir.

4 (2: DEBTOR 6 Company Limited had an inventory of
lands with

5 approved sub-divisions and so its future
6 works was secure.

7 A: That is correct.

8 Q: DEBTOR 6 Company Company Limited had a
9 Loan Commitment from the National
10 Development Bank for \$ [REDACTED] at 13%

11 A: That is correct.

12 Q: e) DEBTOR 6 Companyawaited the provision by
13 Finsac/Horizon of certain securities to
14 NDB. The provision of the securities
15 was a contractual obligation owed by
16 Horizon to DEBTOR 6 Companywithin Horizon's
17 power and capability to comply.

18 A: That is correct, sir.

19 f)FINSAC having taken over Horizon had
20 within its power the means to fulfill
21 Horizon's obligations owed to DEBTOR 6
Company.

22 By failing to provide the securities to

23 NDB, Finsac caused the NDB loan
24 commitment to expire and breached its
25 contractual obligations to DEBTOR 6 Company.

1 A: That is correct, : sir.
2 Q: g)Although FINSAC advanced money on
3 DEBTOR 6 Company's behalf, they did so solely
to
4 secure the importation of the equipment
5 ordered by DEBTOR 6 Company and on which
6 significant deposits had been paid?
7 A: That is correct.
8 Q: I refer to Mr. Errol. Campbell's evidence
9 given to this Honourable Commission and
10 in particular the document entitled
11 'Window of Opportunity' submitted by him
12 and tendered into evidence as Exhibit
13 EC21A.
14 A: That is correct.
15 MR. WONG KEN: Commissioner, I.. am Wondering whether the.:
16 Commission requires to have that
17 document in front of it.
18 COMM BOGLE: A request has been made far' it.
19 MR. WONG KEN: Interestingly, [REDACTED] whose name
20 appears on page. one got a.w.rite off of
21 \$[REDACTED] and [REDACTED] whose name
22 appears on page 2 of the document got a
23 write off of \$[REDACTED]. They were both
24 purchasers in the [REDACTED] complex who

benefited from the Special Mortgage of

1 12% offered by Horizon.

2 A: That is correct.

3 Q: I ask the Commission to review the list

4 of write-offs and the amounts that were

5 written off for many people. Part of the

6 remit of this Commission is to determine

7 if persons were treated fairly. In

8 circumstances where FINSAC was the cause.

9 of the financial problems for both

10 DEBTOR 6 Company Limited and DEBTOR 6

Company, and where we tried

11 so many times to negotiate a settlement

12 of the resulting indebtedness, I do not

13 think DEBTOR 6 Company Limited and DEBTOR 6

Company were treated

14 fairly.

15 A: That is correct, sir.

16 Q: I bring the Commission's attention to a

17 few examples on the Exhibit EC21A as

18 follows:

19 Page 1

20 a) [REDACTED] 76% write-off

21 \$6,461,020

22 b) [REDACTED] 82% write off

23 \$44,600,000

24

c) [REDACTED] 92% write off \$4,454,646

25

d) [REDACTED] 88% write off

1 \$94,439,008
 2 e) [REDACTED] 45% write off \$21,308,282
 3 f) [REDACTED] 67% write off
 . \$25,986,000
 g) [REDACTED] 60% write off
 6 \$11,553,041
 - h) [REDACTED] 50% write off
 \$22,161,082 [REDACTED] DEBTOR
 9 6-
 10 70% write off \$1,354,957
 11 i) [REDACTED] DEBTOR 6- 42% write off
 12 \$12,580,000
 13 j) [REDACTED] 97% write off
 14 \$112,908,374
 15 k) [REDACTED] 48% write
 16 off \$24,980,000
 17 l) [REDACTED] 100% write off \$942,000
 18 m) [REDACTED] 75% write off
 19 \$20,857,080
 20 n) [REDACTED] 90% write off \$163,100:
 21 o) [REDACTED] 80% write off
 22 262, 130, 000
 23 78. There are many others on the list who
 24 benefitted from more than 50% write
 off. I was asking for a 8% write off and

FINSAC rejected my proposal.

1 A: That is correct sir.

2 Q: In fairness to my companies, to my wife and my
3 children, I humbly ask this Commission to summons the
4 persons who received write-offs of more than 30% so that they
5 can explain what they did to qualify for the write-offs they
6 got when so many of us did not.

7 A: That is correct, sir.

8 Q: That has. to be corrected,
9 replacing
10 Green with Campbell.

11 Until hearing Mr. Campbell's evidence I was not aware of.
12 any window of

13 14 opportunity. No one wrote to us to
inform us of an opportunity to negotiate a settlement.

15 In any event FINSAC could not say that I did
16 not make many proposals to settle the
17 indebtedness.. See Exhibit DEBTOR 6-12. Just
18 a reference to the earlier exhibit that is
19 the letter signed by Suzette Campbell in
20 which she acknowledged in the second
21 paragraph:

22 "You would appreciate over the past months our
23 . -

24

have f

officer

