

COMMISSION OF ENQUIRY
INTO THE COLLAPSE OF FINANCIAL INSTITUTIONS OF JAMAICA
IN THE 1990'S

THE JAMAICA PEGASUS HOTEL
81 KNUTSFORD BOULEVARD
KINGSTON 5

WITNESS: DEBTOR 6

STATEMENT NUMBER - 1

EXHIBITS - 16

DATE MADE 1st December 2010

WITNESS STATEMENT OF [REDACTED]

I DEBTOR 6 state as follows;

1. I reside at and have my permanent place of abode and postal address at [REDACTED]
2. I am married to [REDACTED]
3. I have been in the construction industry for over 25 years.
4. In December 1980 I incorporated [REDACTED] Limited,
(hereafter referred to as [REDACTED] or 'the company') that was owned and
operated by my wife and I.
5. That company was in the business of constructing housing developments. From
in or about [REDACTED], the company successfully completed several projects
including the following:-
 - a) [REDACTED] - apartment complex plus 1 – 4 bedroom house;
 - b) [REDACTED] - apartment complex plus 2 – 4 bedroom duplexes;
 - c) [REDACTED] apartment complex;
 - d) [REDACTED], apartment and townhouse complex;
 - e) [REDACTED] – apartment complex;
 - f) [REDACTED] – apartment complex;
6. The company also developed a land bank for projects that included;
 - a) 1 acre - [REDACTED], with approval for Town House complex,
registered at title numbered [REDACTED];
 - b) 3 acres – [REDACTED], with approval for Town House
complex registered at titles numbered [REDACTED];

- c) 10 ½ acres –at [REDACTED], with subdivision approval registered at titles numbered [REDACTED];
[REDACTED] 1 acre at [REDACTED], with approval for shops and warehouse complex registered at title numbered [REDACTED]
7. In May 1994 [REDACTED] took a demand loan facility from Horizon Merchant Bank and Horizon Building Society (hereafter referred to as Horizon) in the amount of [REDACTED]
8. The purpose of that loan was:
- a) \$ [REDACTED] to assist in completing [REDACTED];
 - b) \$ [REDACTED] to cover interest expenses during construction, legal and commitment fees;
 - c) \$ [REDACTED] for the 1st and 2nd deposit in the purchase of [REDACTED]
9. Loan funds were disbursed on Progress billing certified by [REDACTED] Quantity Surveyor. The terms of repayment of the Horizon Loan:-
- a) Lump sum payments to principal from sale proceeds.
 - b) All outstanding was to be deducted from each loan disbursement.
10. The method of servicing interest ensured that the company was never delinquent on its loans and that method was used throughout the relationship between [REDACTED] and Horizon.
11. I tender as an exhibit a copy of the Commitment Letter from Horizon dated May 4th 1994 (TD1)
12. On May 9th 1995, [REDACTED] took a Demand Loan from Horizon that 'supersedes all previous commitments'. The amount of the loan was \$87 million. The loan was to be repaid from the sale of apartment units at [REDACTED] and from sales of units in the [REDACTED]. Provision was made for funds to be drawn down against the facility to cover interest. Essentially interest was serviced directly from each disbursement, again ensuring that the company was never delinquent on its loan.
13. I tender as an exhibit a copy of the Commitment Letter from Horizon dated May 9th 1995 (TD2).
14. The [REDACTED] complex at [REDACTED] started in or about May 1995, and the company received a first draw down from Horizon of [REDACTED].
15. On September 29th 1995, [REDACTED] took a Demand Loan from Horizon that 'supersedes all previous commitments'. The amount of the loan was \$ [REDACTED]. The loan was to be repaid from the sale of apartment units at the [REDACTED] and from sales of units in the [REDACTED].
16. Provision was made for funds to be drawn down against the facility to cover interest. Essentially interest was serviced directly from each disbursement, again ensuring that the company was never delinquent on its loan.
17. I tender as an exhibit a copy of the Commitment Letter from Horizon dated September 29th 1995 (TD3)
18. By September 1995, the [REDACTED] was far advanced, but interest rates were climbing and the company was paying as much as 60%. By the time the project was completed in late 1997 we were paying about 64%.

19. In July 1996 - Final sale proceeds of \$ [REDACTED] was paid to Horizon by the company's attorneys-at-law Messrs. Livingston Alexander & Levy and the mortgage over that complex was discharged.
20. In September 1996 the company received the final drawdown from Horizon on the Palermo - Waterloo Road project. The total drawdown on the project was [REDACTED].
21. Sales on [REDACTED] were adversely affected by the rapidly rising mortgage rates offered by banks and mortgage companies to prospective purchasers. Between the months of April 1996 to January 1997 only 6 units in that complex were sold.
22. From the number of persons enquiring about purchasing apartments at Palermo it was clear to me that the selling price was within the market but that potential purchasers were unable to qualify for mortgages at the rates offered by financial institutions. I discussed this with Horizon, and in about September 1997 the bank offered to purchasers a special mortgage rate of 12% for a 2 year term.
23. Within five months of that special mortgage rate 22 units were sold at the same selling price previously asked.
24. On September 30, 1997, the company negotiated a Demand Loan for [REDACTED] from Horizon that 'supersedes all previous commitments'. The purpose of the loan was to consolidate the company's indebtedness at an interest rate of 35%. The loan also contained an amount to complete the Palermo project, with disbursements made against [REDACTED] Quantity Surveyor's Certifications. Horizon agreed to waive Commitment Fees, and Lender fees. I will refer to this loan as the Consolidation Loan.
25. Repayment of the loan was to be from the sale of the remaining units [REDACTED] and also from the sale of 10 Town house units to be developed at [REDACTED].
26. Interest was serviced directly by deductions from disbursements on [REDACTED] progress billing again ensuring that the company was never delinquent on its loans.
27. I tender as an exhibit a copy of the Commitment Letter from Horizon dated September 30, 1997 (TD4).
28. The security given to Horizon in respect of that latest Demand Loan were:
 - a) Debentures over the fixed and floating assets of the company;
 - b) Collateral 2nd mortgage over lands registered at [REDACTED] - 1st Mortgage to National Commercial Bank for [REDACTED].
 - c) Collateral First Mortgage over residential development at 35b Upper Waterloo Road - Palermo;
 - d) Collateral First mortgage over lands registered [REDACTED] respectively;
 - e) Unlimited personal guarantees of [REDACTED];
 - f) Assignment of life insurance on life of [REDACTED];
29. In 1997 [REDACTED] was not in default of its loan obligations to Horizon. The company had several projects on its schedule of work, and in particular it

- planned to commence the Town House complex at [REDACTED] and on the 3 [REDACTED] as soon as the [REDACTED] was complete.
30. In 1996 I incorporated Accurate Concrete Company Limited (Accurate). The shareholders were my wife and I. Accurate concrete was intended to have capacity to provide concrete to [REDACTED] projects and as well to other purchasers. In or around 1996, the supply of cement and concrete was not reliable and I saw that [REDACTED] could gain a competitive advantage by having a reliable supplier of concrete.
31. By 1997, the GOJ had announced that it would make financing available through the National Development Bank of Jamaica (NDB) to company's that qualified.
32. In November 1997, Horizon Merchant Bank offered credit facility of [REDACTED]. That loan was negotiated in the context that [REDACTED] was to be a bridge finance pending NDB funding of a loan to Accurate.
33. I tender as an exhibit a copy of a letter dated November 10th 1997, from Horizon Merchant Bank Limited to [REDACTED] Limited. (TD5).
- a) The purpose of the loan was to make deposit on equipment for the cement project; and
 - b) to repair and refurbish premises to house the business;
34. The unique features of this loan were:
- a) The greatly reduced interest rate at 17% on a reducing balance and not compounded.
 - b) Interest was to be calculated monthly but repaid from the NDB facility when that was funded. So again arrangements were in place so that the company would not be delinquent on its loan with Horizon.
 - c) Commitment fee was waived.
35. Accurate successfully applied to the NDB for direct loan assistance in the amount of [REDACTED]. The NDB loan facility was approved in May of 1998 to purchase equipment, refurbish property from which the project would operate and to provide working capital support for the company to establish a concrete mixing plant
36. I tender as an exhibit a copy of a Letter of Commitment dated 1998 May 12 from NDB to [REDACTED] Limited. (TD6)
37. Among other things the Letter of Commitment provided for:-
[REDACTED]
38. Since September 1997, Horizon provided draw downs on both the [REDACTED] Consolidation Loan and on the [REDACTED].
39. [REDACTED] acted upon the Consolidation Loan by engaging in its normal commercial activities and did things consistent with being a housing developer.
40. [REDACTED] acted on the Bridge Finance Loan and subsequently on the NDB Commitment by ordering equipment and making deposits on equipment. It undertook liabilities and caused securities to be pledged on its behalf.
41. Based upon the Consolidation Loan and on the Bridge Finance Loan from Horizon and upon the NDB commitment, my wife and I gave guarantees and

- took on financial obligations in support of [REDACTED].
42. On or about November, 1997 Horizon was taken over by Finsac. At that time neither [REDACTED] were in arrears of their obligations to Horizon. At that time Horizon was still contractually obligated to both [REDACTED] for the following:
- a) To provide draw downs to [REDACTED] d;
 - b) To provide draw downs to [REDACTED];
 - c) To provide documents to NDB so that the NDB could perfect its security package and disburse funds to [REDACTED].
43. I was not notified that FINSAC had taken over Horizon. I found this out when I went to the bank in the normal course of business, whereupon I learnt that both Mr. Beckford and Mr. Scott had been relieved of their positions in the bank. I was introduced to Mr. Deryck Rose who told me he represented FINSAC and would be taking over the operations of the bank.
44. Immediately that Finsac took over Horizon all of [REDACTED] commercial activities were thrown into chaos. We were not able to receive draw downs on the presentation of Quantity Surveyor's Certificates. Accurate was not able to get funds for the repair and refurbishment of its premises. After many meetings and after the passage of many weeks Citizen's Bank issued cheques on behalf of [REDACTED] to pay the outstanding amounts due on the equipment and for shipping and related costs. These payments came about because the vendor of the equipment threatened to cancel the sale and to forfeit the deposits.
45. Unlike other companies whose accounts were taken over by Finsac, we were not taken over by Finsac but our bank was.
46. At the time that Horizon was taken over by Finsac the [REDACTED] [REDACTED] was not fully disbursed.
47. At the time that Horizon was taken over by Finsac receipts from the sale of apartments were still being paid to Horizon.
48. Prior to the Finsac take over of the bank, when dealing with Horizon, on the completion of a sale of property [REDACTED] would receive a statement from our attorney advising us how the proceeds of the sale were accounted for. Horizon would then acknowledge receipt of this in writing showing how funds received was allocated to principal and interest and balance on our account.
49. Also Horizon would regularly send us letters advising of increases and reductions in interest rates.
50. At the time that Horizon was taken over by Finsac approximately 20 apartments in [REDACTED] were under contract. Those contracts were completed after the Finsac take over and [REDACTED] has not received any accounting of the proceeds of sale. I estimate that from the proceeds of sale from the Palermo, a total of \$125,152,000 was repaid on the Consolidation Loan.
51. We made numerous verbal requests for information in respect of the sale proceeds but we did not receive any information to those requests.
52. On November 4th 1998, [REDACTED] wrote to Finsac attention Mr. Rose requesting information on 25 apartments for which FINSAC received the proceeds of sale.
53. I tender as an exhibit the copy of a letter from [REDACTED]

Limited to Finsac Limited dated November 4th 1998. (TD7).

54. [REDACTED] did not receive a reply to its letter of November 4th 1998.
55. Since November 4th 1998, until August 1999, I attended countless meetings with representatives of Finsac and very often requested the information set out in our letter of November 4th 1998. I believe that we did write to Finsac during that period again requesting information but I do not have copies of those further letters.
56. I tender as an exhibit a copy of a letter dated August 29th 1999 from [REDACTED] to FINSAC attention Miss Suzette Campbell again requesting information on the sale proceeds of the same apartments mentioned in our letter of November 4th 1998, plus others. (TD8)
57. I tender as an exhibit a letter dated September 15th 1999 from Finsac to [REDACTED] enclosing copies of 16 sales agreements. (TD9)
58. No other information was provided and no other response to our inquiries was ever received from Finsac.
59. Part of Horizon's obligation to [REDACTED] was that the title for the Jacks Hill property was to be given to NDB along with a Bill of Sale over the equipment & a 2nd mortgage over the Montrose property to perfect the NDB security.
60. Under the management of FINSAC, Horizon breached its obligation to [REDACTED] by failing to provide the said documents to the NDB.
61. In the many meetings that I had with Deryck Rose and or Audrey Robinson I made them aware of the NDB loan and the obligations that Horizon had to fulfill so [REDACTED] could take advantage of the NDB facility.
62. I warned them that the NDB facility was going to expire and that we would lose the facility if they did not provide the required security as agreed with Horizon.
63. I tender as an exhibit a copy of a letter dated 03 May 1999 from NDB to [REDACTED]. (TD10)
64. By May 1999 Mr. Ewart Scott wrote to Finsac on behalf of [REDACTED]. In that letter he sets out:-
 - a) Finsac's claim that we owed them \$[REDACTED]. Of that he pointed out that an amount of \$[REDACTED] arose from our indebtedness to Century National Bank, in circumstances that we had never borrowed any money from Century National Bank.
 - b) That we had assets appraised at \$[REDACTED]
 - c) That we proposed a settlement of our indebtedness by way of FINSAC taking the assets of \$[REDACTED] and forgiving the remainder of approximately \$[REDACTED].
65. I tender as an exhibit a copy of a letter dated May 12 1999, from Ewart Scott to FINSAC attention Mrs. Audrey Robinson (TD11).
66. I tender as an exhibit a copy of a letter dated October 4th 1999, signed by Suzette Campbell Credit Manager rejecting the offer and informing us that they would take steps to protect their interest. (TD12).
67. What Mr. Scott's letter did not say is that it was FINSAC's actions alone that created the irretrievable financial problems for [REDACTED].
68. After Finsac took over Horizon I tried desperately to make other banking arrangements for [REDACTED] but Finsac held all the assets of those

- companies plus the personal guarantees of me and my wife. Every proposal made to Finsac was rejected or simply ignored.
69. Another proposal made to Finsac to liquidate our debts was through the development of the property at [REDACTED] (golden triangle) for 10 luxury town house units and [REDACTED] 32 semi-detached town house units. Finsac rejected the proposal, only to dispose of the [REDACTED], less than half of its appraised value.
70. Without banking facilities [REDACTED] were unable to continue their businesses. Our first mortgage with National Commercial Bank Limited over the [REDACTED] went into arrears and that bank sold the [REDACTED] property under Powers of Sale in or about August 1999. It used the proceeds of sale to clear its mortgage and remitted the balance to Finsac.
71. We have not received an accounting from Finsac as to how those monies were applied against the loan. We did receive a receipt from Refin Trust Limited acknowledging that an amount of [REDACTED] was paid to it by National Commercial Bank Limited. Up to that point I had no knowledge of who Refin Trust Limited was, or why it was writing to me.
72. Upon the sale of the [REDACTED] had no further debt to National Commercial Bank, yet Denis Joslin Jamaica Limited would in 2002 make a claim for that indebtedness.
73. In summary, when Finsac took over Horizon,
- a) [REDACTED] was a vibrant company involved in completing the [REDACTED]. Finsac received the bulk of the sale proceeds of approximately 30 units without giving any account therefore.
 - b) [REDACTED] was not in default of its financial obligations to Horizon;
 - c) [REDACTED] had an inventory of lands with approved sub-divisions, and so its future works was secure;
 - d) [REDACTED] Limited had a Loan Commitment from the National Development Bank for [REDACTED]
 - e) Accurate awaited the provision by Finsac/Horizon of certain securities to NDB. The provision of the securities was a contractual obligation owed by Horizon to [REDACTED] within Horizon's power and capability to comply.
 - f) Finsac having taken over Horizon, had within its power and capability the means to fulfill Horizon's obligations owed to [REDACTED]. By failing to provide the securities to NDB, Finsac caused the NDB Loan Commitment to expire, and breached its contractual obligation to [REDACTED].
 - g) Although Finsac advanced money on [REDACTED] behalf, they did so only to secure the importation of the equipment ordered by [REDACTED] and on which significant deposits had been paid.
74. I refer to Mr. Errol Campbell's evidence given to this Honourable Commission and in particular the document entitled "WINDOW OF OPPORTUNITY" submitted by him and tendered into evidence as Exhibit EC21A.
75. Interestingly [REDACTED]

██████████. They were both purchasers in the ██████████ who benefitted from the Special Mortgage rate of 12% offered by Horizon.

76. I ask the commission to review the list of Write-offs and the amounts that were written off for many people. Part of the remit of this Commission is to determine if persons were treated fairly. In circumstances where FINSAC was the cause of the financial problems for both ██████████, and where we tried so many times to negotiate a settlement of the resulting indebtedness, I do not think ██████████ were treated fairly.

77. I bring the Commission's attention to a few examples on the exhibit EC21A as follows:

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- a) A. ██████████ 76% write-off \$6,461,020
- b) ██████████ 82% write off \$44,600,000
- c) ██████████ 92% write off \$4,454,646
- d) ██████████ 88% write off \$94,439,008
- e) ██████████ 45% write off \$21,308,282
- f) ██████████ 67% write off \$25,986,000
- g) ██████████ 60% write off \$11,553,041
- h) ██████████ 50% write off \$22,161,082Crescent
- i) ██████████ 70% write off \$1,354,957
- j) ██████████ 42% write off \$12,580,000
- k) ██████████ 97% write off \$112,908,374
- l) ██████████ 48% write off \$24,980,000
- m) ██████████ 100% write off \$942,000
- n) ██████████ 75% write off \$20,857,080
- o) ██████████ 90% write off \$163,100
- ██████████ 80% write off 262,130,000

78. There are many others on the list who benefitted from more than 50% write offs. I was asking for a 8% write off and FINSAC rejected my proposal.

79. In fairness to my companies, to me my wife and my children I humbly ask this Commission to Summons the persons who received write offs of more than 30% so that they can explain what they did to qualify for the write-offs they got when so many of us did not.

80. Until hearing Mr. Green's evidence I was not aware of any WINDOW of OPPORTUNITY. No one wrote to us to inform us of an opportunity to negotiate a settlement.

81. In any event FINSAC could not say that I did not make many proposals to settle the indebtedness. See exhibit TD12.

82. Sometime in 2002, ██████████ received a letter from ReFin Trust informing it that its account had been sold to Dennis Joslin Jamaica Inc. I cannot recall whether or not I received a similar letter in respect of ██████████.

83. I tender as an exhibit a copy of a letter dated March 19th 2002 from Joslin Jamaica Limited addressed to ██████████, one of my enterprises. (TD13).

84. That letter claimed that [REDACTED] indebtedness to Workers Saving and Loan Bank had been acquired by Jamaican Redevelopment Foundation Inc. To my certain knowledge [REDACTED] has never borrowed any money from Workers Saving and Loan Bank.
85. I tender as an exhibit a copy of a letter dated March 27 2002 from Refin Trust Limited [REDACTED] informing me that the company's indebtedness had been sold to Jamaica Redevelopment Foundation Inc.
86. TD(14).
87. To my certain knowledge that company had no indebtedness, nor had it signed any guarantees for anyone or any entity.
88. I tender as exhibits copies of letters dated October 2 2002 from Dennis Joslin Jamaica Inc as follows:
- a) [REDACTED] Limited claiming a total of [REDACTED] accruing interest at [REDACTED] per day. I believe that the loan numbered [REDACTED] for [REDACTED] is in relation to the alleged Century loan that [REDACTED] knows nothing about. (TD 15a);
 - b) [REDACTED] claiming a total of [REDACTED] accruing interest at [REDACTED] per day. (TD 15 b);
 - c) [REDACTED] Limited claiming a total of [REDACTED] accruing interest at [REDACTED] per day. (TD 15 c); Roofing Ceiling & Floors Limited was not indebted to either Horizon or to National Commercial Bank Limited as that amount was paid off in February of 1996.
 - i. I tender as exhibit TD15c(i) copy of a letter from Horizon dated February 26 1998 addressed to [REDACTED] Limited;
 - d) [REDACTED] as guarantors for [REDACTED] claiming a total of [REDACTED]. This was the first time a demand was made on us as Guarantors in respect of [REDACTED] debt. (TD15d)
 - e) [REDACTED] as guarantors for [REDACTED] claiming a total of \$ [REDACTED]. This was the first time a demand was made on us as Guarantors in respect of [REDACTED] debt. (TD15e);
 - f) [REDACTED] Limited claiming a total of [REDACTED]. (TD15f)
 - g) [REDACTED] claiming a total of \$ [REDACTED] accruing interest at \$ [REDACTED] per day. (TD15g)
 - h) [REDACTED] claiming a total of \$ [REDACTED] accruing interest at \$ [REDACTED] per day. (TD15h)
89. On or about March 2002 I had met with a representative of Dennis Joslin at which time I was given a document entitled Relationship "Roll Up Sheet" that purported to convert the Jamaican indebtedness to United States currency. The document set out meaningless numbers. I was asked agree the indebtedness but I refused.
90. I tender the 'Roll Up Sheet' as an exhibit. (TD16)

STATEMENT OF TRUTH

I DEBTOR 6 certify that the facts stated in this witness statement are true.

SIGNED:
Debtor 6