

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
WEDNESDAY FEBRUARY 16, 2011

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 JAMAICAN REDEVELOPMENT FOUNDATION

Mrs. Sandra Minott-Phillips -- Attorney-at-Law
Mr. Gavin Goffe - Attorney -at-Law

REPRESENTING MR. PATRICK HYLTON

Mr. Dave Garcia - Attorney-at-Law

REPRESENTING DEBTOR 12

Mr. Raphael Codlin Ms. Melissa Cunningham

GIVING EVIDENCE Debtor 12

1 Wednesday, February 16, 2011

2 COMM. BOGLE: Good morning, ladies and gentlemen.

3 This Enquiry is now in session. And may
4 I have for the records the names of the
5 Attorneys present, please.

6 MR. CODLIN: Raphael Codlin, sir, and with me
7 Miss Melissa Cunningham. We are the
8 Attorneys representing Debtor 12.

9 COMM. BOGLE: Thank you.

10 MRS. PHILLIPS: Sandra Minott-Phillips, instructed by
11 Myers Fletcher and Gordon for Jamaican
12 Redevelopment Foundation.

13 I am asking you to excuse the absence of
14 Mr. Goffe. He is dealing with something
15 in court for the morning session but I
16 expect him to join us in the afternoon
17 session.

18 COMM. BOGLE: On that score I would just like to

19 mention that we will not be having an
20 afternoon session today because
21 unfortunately Mr. Codlin has a previous
22 court engagement for this afternoon.

23 Okay Mr. Codlin, can you call your
24 witness, please.

25

1 COMM. BOGLE: In the mean time, Mrs. Phillips, you got
2 your copy of the Witness Statement?
3 MRS. PHILLIPS: I got it yesterday afternoon, sir.

4 COMM. BOGLE: Not at your office?
5 MRS. PHILLIPS: No. *The office* here indicated that they
6 had not in fact sent it out by currier
7 so I got it for the first time after the
8 session yesterday afternoon. I have not
9 had time to read all of it yet, but I'll
10 try my best?
11 COMM. BOGLE: My apologies about that because the
12 Commission was surely under the
13 impression that it *had* gone out to you
14 earlier.
15 MRS. PHILLIPS: Miss Johnson indicated otherwise.

16 COMM. BOGLE: Can you have Debtor 12 sworn, please.

17 (Witness sworn)

18 Thank you. Mr. Codlin, you may proceed.

19 MR. CODLIN: Much obliged to you, Mr. Chairman and
20 your members. If it pleases you, Mr.
21 Chairman and your members, may I take
22 this belated opportunity of welcoming
23 Justice Downer. He was not here when I
24 was last here.

25 JUSTICE DOWNER: Thank you sir.

1 MR. CODLIN: Debtor 12 can you hear me?

2 DEBTOR 12: Yes, sir.

3 Q: I am going to be putting some questions

4 to you. We ask you to think and answer

5 them and let us proceed.

6 A: Okay.

7 COMM. BOGLE: And you may point out to Debtor 12 that

8 his submission is the document; that the

9 questions being answered, he may read

10 from his statement.

11 MR. CODLIN: You may read from the document which you

12 have as this is the document that we are

13 proceeding with.

14 Sir, your name is Debtor 12,

15 DEBTOR 12: Yes, sir.

16 Q: What is your occupation?

17 A: Businessman.

18 Q: Where do you live?

19 A: Mandeville.

20 Q: In the parish of Manchester?

21 A: Yes.

22 Q: In 1994, did you obtain a loan from a

23 commercial bank?

24 A: Yes, sir.

25 Q: Was it Eagle Commercial Bank?

1 A: Yes, sir.

2 Q: The loan was for how much?

3 A: xx million dollars.

4 Q: Do you remember what month in the year

5 you obtained the loan?

6 A: 1994.

7 Q: You don't remember the month?

8 A: No, not quite.

9 Q: All right, we will proceed. After you

10 obtained the loan in 1994 did you make

11 any payment on it?

12 A: Yes, sir.

13 COMM. BOGLE: Would you like to start looking at

14 paragraph 2, the security for the loan.

15 MR. CODLIN: Yes, Mr. Chairman.

16 What security were you required to put

17 up when you obtained the loan?

18 A: The land at 37 Manchester Road.

19 Q: Land at 37 Manchester Road?

20 A: Yes.

21 Q: Are you conversant with mortgage?

22 A: Yes, sir.

23 Q: Do you mean that you mortgaged your

24 land?

25 A: Yes, sir.

1 Q: Now we come to the question of payments.
2 Do you remember, can you give details of
3 when you made payments?
4 A: No, sir, it is so long ago that I don't
5 remember.
6 COMM. BOGLE: Mr. Codlin, I note looking on the
7 submission that you have certain
8 attachments to the submission. I don't
9 know if as you go along if you wish for
10 them to be placed as exhibits.
11 MR. CODLIN: Yes.
12 COMM. BOGLE: If so, please when you reach to them
13 point them out and then submit them.
14 MR. CODLIN: I shall surely do so, sir. Thank you
15 very much.
16 Now up to about 2002, between 1994 and
17 2002, can you tell this Commission how
18 much you repaid on the loan.
19 A: I paid over xx Million Dollars on
20 the loan.
21 Q: In making those payments, did you pay
22 directly or through someone?
23 A: I paid through the lawyer.
24 Q: Do you recall the name of the lawyer?
25 A: It was Tony Pearson.

1 Q: Mr. Anthony Pearson?

2 A: Yes.

3 COMM. BOGLE: Again I might just interject here, Mr.

4 Codlin.

5 MR. CODLIN: Yes, sir.

6 COMM. BOGLE: In view of the fact that we do have the

7 Witness Statement which is supposed to

8 be the basis of your presentation this

9 morning, what would assist us is if you

10 could sort of keep to the format that is

11 here so we can follow as we go along.

12 For instance in paragraph 2 you said

13 attached copies of titles of the said

14 properties.

15 MR. CODLIN: You would like the exhibit to be

16 identified?

17 COMM. BOGLE: As we go along and then go to paragraph

18 3 and 4 so it is easier for us to follow

19 the line.

20 MR. CODLIN: Thank you very much, sir.

21 Now you made reference to titles in your

22 witness statement.

23 A: Yes, sir.

24 Q: Could you turn to page 1 and tell the

25 Commission if those are the titles to

1 which you refer?

2 A: Yes, sir.

3 Q: Those are the titles?

4 COMM. BOGLE: Can you just for the record identify the

5 titles by volume and folio number for

6 us.

7 MR. CODLIN: Sure.

8 The titles are registered one, volume

9 xx, folio xx; two, volume xx, folio

10 xx; three, volume xx, folio xx;

11 next, volume xx, folio xx; next,

12 volume xx, folio xx; next, volume

13 xx, folio xx; volume xx, folio xx;

14 volume xx, folio xx; volume xx,

15 folio xx; volume xx, folio xx;

16 volume xx, folio xx.

17 COMM. BOGLE: Okay. Are you therefore putting these in

18 as exhibits?

19 MR. CODLIN: Yes, sir, but just before I put them in

20 may ask him something?

21 COMM. BOGLE: Sure.

22 MR. CODLIN: These are splinter titles which you gave

23 in 1994?

24 A: Yes, sir.

25 MR. CODLIN: May I, if it pleases you sir, ask that

1 all these titles be marked as Exhibit 1
2 for the record?

3 COMM. BOGLE: ML-1.
4 MR. CODLIN: Yes, sir.

5 MRS. PHILLIPS: Commissioners, I am just going from the
6 statement which seems to indicate that
7 the titles are IA.

8 MR. CODLIN: Yes.

9 COMM. BOGLE: Okay, we will go with that. Thanks,
10 Counsel.

11 MR. CODLIN: If it accords with your approval...

12 COMM. BOGLE: We have so many titles, we have 1A,
13 could we have 1A(i); 1A(ii); 1A(iii) and
14 so forth.
15 MR. CODLIN: Sure, sir.

16 MRS. PHILLIPS: Using Roman numerals?

17 COMM. BOGLE: Yes, we could use Roman numerals. We
18 know the Roman numerals up to that
19 number. So you would have A1(i) to
20 A1 (ix)

21 MR. CODLIN: Yes, sir. And we observe that xx is
22 not there.

23 MR. GARCIA: I am sorry. Commissioners, I apologies
24 first of all for my late arrival. Dave
25 Garcia, representing Patrick Hylton. I

1 am being offered two copies of the
2 statement because a copy did not reach
3 me. I understand it was sent by courier
4 but unfortunately I did not get it,
5 MR. CODLIN: May I indicate to my learned friend,
6 sir, that the copy that is being handed
7 to him by Mr. DePeralto takes precedence
8 over mine.
9 MR. GARCIA: That is such a pity, sir, because I am
10 seeing a nice bound copy coming from my
11 friend.
12 (Document passed to Mr. Garcia.)
13 COMM. BOGLE: Okay, having entered the titles as
14 exhibits you may proceed.
15 MR. CODLIN: Yes, Mr. Chairman.
16 Now, there was also a Mortgage
17 instrument involved which you have
18 exhibited to your statement marked 'B'.
19 Could you kindly look at page 25. Have
20 you seen it Debtor 12?
21 DEBTOR 12: Yes, Mr. Codlin.
22 COMM. ROSS: Mr. Codlin, the Mortgage, the first
23 Mortgage on the document is dated 1992
24 as is the Mortgage document that you
25 just referred to.

1 MR. CODLIN: Yes, sir.

2 COMM ROSS: But in the statement it said that it was
3 in 1994 that the money was borrowed.
4 Are we talking about the same thing
5 here?

6 MR. CODLIN: We are talking about the same thing. 1
7 can qualify it quite easily.
8 Debtor 12, as has been kindly pointed out
9 to us, look under **Where as** on page 25
10 and read there for us. **The mortgagor is**
11 **the registered owner, etc.**
12 Do you see those words?
13 **The Mortgagor is the registered owner of**
14 **the lands (hereinafter called "the said**
15 **lands") described in the Mortgage**
16 **Instrument dated the 22nd of October,**
17 **1992.**
18 What the Commissioners would like to
19 know is whether or not the loan that you
20 received was really received in 1992 or
21 in 1994.

22 A: Between 1992 to 1996 I received them.

23 Q: Are you are saying you don't recall
24 whether it was 1992 or 1994?

25 A: No, it was such a long time, you know.

1 Q: Okay.

2 COMM. BOGLE: The Instrument of Mortgage which is on
3 pages 25 to 37, what I notice is that
4 the schedule which is on page 10, which
5 would be 34, it refers to principal sum
6 of xx million.

7 MR. CODLIN: Yes, sir.

8 COMM. BOGLE: However, the Witness Statement so far
9 indicates \$xx million. Can we have a sort
10 of - and bearing in mind that this
11 Mortgage Instrument is actually saying
12 1992, while the Witness Statement
13 mentions a \$xx million in 1994, so are we
14 talking about the same thing? Are we
15 talking about a loan or Mortgage in 1992
16 and another in 1994? If so was the one
17 in 1992 cleared up or what? Can we have
18 some clarity?

19 MR. CODLIN: Most obliged to you, Mr. Chairman.

20 Indeed.

21 Now, in relation to what is on page 34
22 and in order to clarify it for your good
23 self and your members, Mr. Chairman, I
24 should like to refer you kindly to 37
25 which shows that what **is** before you was

1 Q: Just a moment. You say you did not see
2 the literature? Take your time sir.
3 First of all when you said 'did not',
4 what time are you referring to?
5 A: When I signed this.
6 Q: When you signed the document you did not
7 see the literature?
8 A: Yes, sir.
9 Q: You mean you did not see it or it wasn't
10 there? Which one?
11 A: It wasn't there.
12 COMM. BOGLE: Can you explain 'literature' to me.
13 A: All that is above.
14 MR. CODLIN: What do you call the literature which
15 wasn't there?
16 A: All the writing that is above.
17 Q: When you signed the writings were not
18 there?
19 A: No.
20 Q: I see.
21 COMM. BOGLE: Is he saying that he signed the document
22 blank?
23 MR. CODLIN: Yes, sir, that is what he said.
24 COMM. BOGLE: When?
25 MR. CODLIN: I am coming to that, sir, he hasn't

1 stated yet.

2 Do you recall when you signed this
3 document without the literature as you
4 put it?

5 A: Yes, sir.

6 Q: When?

7 A: It was in the '90s.

8 Q: Sorry?

9 A: It was in the '90s when I signed it.

10 Q: It was in the '90s when you signed it?

11 A: Yes, sir.

12 Q: I see. Do you recall what date, month
13 or year in the '90s?

14 A: No, sir.

15 Q: Do you recall where you were when you
16 signed it?

17 A: Yes, sir.

18 Q: Kindly tell the Commission where it was
19 that you signed it.

20 A: I signed it at Tony Pearson's office. He
21 was my lawyer, then.

22 Q: Was anyone present when you signed it?
23 MRS. PHILLIPS: I think he said Mr. Pearson.

24 MR. CODLIN: No, he did not say that.

25 Was anyone present when you signed it?

1 A: I just signed it because I am living in
2 Mandeville and it was so hard to get to
3 his office so I just signed several
4 copies, blank papers, and leave it in
5 his office.

6 Q: Does that mean that when you signed
7 these blank papers he wasn't there?

8 A: No, he wasn't there.

9 Q: I see.
10 May I proceed, sir?

11 COMM. BOGLE: Yes.

12 MR. CODLIN: If it pleases you, Mr. Chairman and your
13 members, may the Mortgage Instrument so
14 called be admitted in evidence as
15 Exhibit 2.

16 COMM. BOGLE: I think on your Witness Statement you
17 had said 1B. Do you want to retain the
18 1B?

19 MR. GOBLIN: So as not to cause any confusion with
20 anything in one, perhaps you might find
21 it prudent to call it 2 rather than 1B.

22 COMM. BOGLE: We will call it 2.

23 MRS. PHILLIPS: Mr. Chairman, for clarification; do you
24 have two copies of the same Mortgage?

25 COMM. BOGLE: Yes, there is duplication. I think the

1 Secretary was indicating to me that
2 pages 25 to 34, if you look you might
3 see pages 25 to 34 duplicated. It is
4 the Mortgage Document. Pages 25 to 34
5 is duplicated so you will have two of
6 that. You can either tear it out or just
7 indicate that it is a duplicate of the
8 one. So it is one document, 25 to 38
9 actually.

10 MR. CODLIN: That is right, sir.

11 COMM. BOGLE: Sometimes, Mrs. Phillips, you don't get
12 enough information but sometimes you get
13 it double.

14

15 Continued ...

16

17

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1
2 COMM. BOGLE: Okay, go ahead.
3 MR. CODLIN: Thank you, sir.
4 COMM. BOGLE: ML2 would be the Mortgage document, page
5 25 to 38. Go ahead Mr. Codlin.
6 MR. CODLIN: Thank you, sir. When you got the loan
7 in 1992 or 1994, did you sign any
8 Mortgage Instrument at that time?
9 MR LEVY: For \$xx Million?
10 Q: Yes.
11 A: Yes, sir.
12 Q: Do you recall where you were when you
13 signed that Mortgage Instrument?
14 A: Pardon me?
15 Q: Do you recall where you were when you
16 signed the Mortgage Instrument in 1992
17 or 1994?
18 A: I was at the bank.
19 Q: You were at the bank?
20 A: Yes.
21 COMM. BOGLE: Which bank, can you identify for the
22 records?
23 A: Eagle Commercial.
24 MR. CODLIN: Eagle Commercial Bank?
25 A: Yes.

1 Q: At what branch?

2 A: It was Duke Street.

3 Q: Duke Street branch. Would you kindly

4 look at the document that we have just

5 looked at.

6 A: What page, sir?

7 Q: The Mortgage document and tell the

8 Commission if you have seen the

9 signature that you appended in 1992/

10 1994?

11 A: It is not numbered here.

12 Q: We appreciate that. Just look if you see

13 any signature that you put at that time?

14 A: Yes, this is my signature.

15 Q: Where?

16 A: At the bottom of the page.

17 Q: What is the page?

18 A: 25th day of January.

19 Q: No, no, what page?

20 COMM. BOGLE: What page are you dealing with?

21 MR. CODLIN: What page Debtor 12? The page is

22 numbered at the right hand top.

23 A: What page, sir?

24 COMM. BOGLE: What page did you see your signature on?

25 MR. CODLIN: That you appended in 1994?

1 COMM. BOGLE: Can we keep our cell phones on silence
2 or turn them off.

3 A: I don't see it.

4 COMM. BOGLE: Is it 37?

5 MR. CODLIN: Just understand me, Debtor 12. You have
6 already pointed out to us a signature
7 which you said was appended without the
8 signature being there, that is not the
9 one I am referring to, I am asking you
10 to look on the pages if you see the
11 signature which you appended in 1992 or
12 1994 when you got the loan?

13 A: I see no signature, sir.

14 Q: It is not there, thank you. All right.
15 Now, can you recall - you have stated in
16 paragraph 3 that on one occasion you
17 made a payment of \$xx Million through
18 Mr. Pearson, do you see that?

19 A: Yes, sir.

20 Q: Is that correct?

21 A: Yes.

22 COMM. BOGLE: Just a minute, Mr. Codlin?

23 MR. CODLIN: I am sorry, sir.

24 COMM. BOGLE: Are you through with the Mortgage
25 document?

1 A: At this stage.

2 COMM. BOGLE: You will be getting back to it because
3 there are still some matters.

4 MR. CODLIN: There are still some things to be

5 cleared up on that, but when you have
6 all the evidence before you, I submit it
7 would be much easier to follow.
8 COMM. BOGLE: Thank you.

9 MR. CODLIN: Now, you said that by 1997 you had paid
10 on the loan?

11 A: Yes.

12 Q: Sums in excess of \$xx Million?

13 A: Yes, sir.

14 Q: Now, you said that you were subsequently
15 advised by REFIN Trust Limited...

16 COMM. BOGLE: That my loan was acquired by REFIN
17 Trust.

18 MR. CODLIN: Yes, sir. You were subsequently advised
19 that your loan was acquired by REFIN

20 Trust Limited, a company set up by the
21 Government to acquire what was termed as
22 bad debts?

23 A: Yes, sir.

24 Q: What can you tell this Commission about
25 Refin Trust, you have had dealings with

1 them, you had made payments to them,
2 what?

3 A: All payments that I made was through
4 Tony Pearson, sir.

5 Q: All payments that were made through?

6 A: Tony Pearson.

7 Q: That is your lawyer?

8 A: Yes, sir.

9 Q: Now, could you kindly turn to page 40.
10 You have seen a letter there?

11 A: Yes.

12 Q: Dated June 24, 2002?

13 A: I see one dated 28th June, 2002.

14 Q: I am sorry.

15 A: Dated the 28th, my paper is saying 28th.

16 Q: I am talking about the top left hand
17 corner, what is the date there?

18 A: 24th June, 2002.

19 Q: You see that letter from your lawyer?

20 A: Yes, sir.

21 Q: It is from Dennis Joslin Jamaica
22 Incorporated?

23 A: Yes.

24 Q: It says that as of that date you were
25 owing \$xx Million?

1 A: Yes, sir.

2 Q: Do you think you were owing that money on that

3 date based on what you have paid on the loan?

4 No, sir.

5 A: If it pleases you, Mr. Chairman and your

6 Q: members, may this document be admitted in

7 evidence as Exhibit 3.

8

9 COMM. BOGLE: Marked ML3.

10 MR. CODLIN: Yes, sir.

11 MRS. PHILLIPS: Which document?

12 MR. CODLIN: The letter from Dennis Joslin dated 24th

13 June, 2002.

14 A: What number is that?

15 COMM. BOGLE: 40 written at the top.

16 MRS. PHILLIPS: Thank you.

17 COMM. BOGLE: ML3.

18 MRS. PHILLIPS: Thank you, sir.

19 MR. CODLIN: Now sir, please turn to page 39, the one

20 before that, do you see an accounting

21 statement there?

22 A: Yes, sir.

23 Q: That accounting statement was the

24 documents which were served on you in

25 other proceedings?

1 A: Yes, sir.

2 Q: And it came from Jamaican Redevelopment
3 Foundation?

4 A: Yes, sir.

5 Q: Could you look at the last full line
6 across that document beginning with the
7 date 21st June 1902.

8 A: At the bottom of the page?

9 Q: Yes?

10 A: Yes, sir.

11 Q: 21st June 02, is that document saying
12 that on the 21st June 02, you were owing
13 \$xx.

14 A: Yes, sir.

15 Q: So on the 21st of June you were owing
16 \$xx Million?

17 A: Yes, sir.

18 Q: And on the 24th you were owing \$xx
19 Million?

20 A: Yes.

21 COMM. BOGLE: \$xx Million is coming from...

22 MR. CODLIN: \$xx Million is in the letter, Exhibit 3,
23 Mr. Chairman.

24 COMM. BOGLE: My copy says \$xx Million.

25 MR. CODLIN: I am sorry, \$xx Million. Thank you.

1 As far as you are aware, based on what
2 you have paid, could you tell the
3 Commission if in your view you were
4 owing any such sum either \$xx or \$xx
5 Million at the relevant time on the 21st
6 or the 24th of June?

7 A: No, sir.

8 COMM. BOGLE: Are you entering this?

9 MR. CODLIN: I am asking you to enter this as Exhibit
10 4, sir.

11 COMM. BOGLE: ML4, yes.

12 MRS. PHILLIPS: Is that page 39?

13 MR. CODLIN: Page 39.

14 COMM. BOGLE: Go ahead Mr. Codlin.

15 MR. CODLIN: Thank you, sir. Debtor 12, do you know
16 of Jamaican Redevelopment Foundation?

17 A: Yes.

18 Q: Could you kindly tell the Commission
19 when you became aware of the existence
20 of Jamaican Redevelopment Foundation?

21 A: In 2001.

22 Q: 2001?

23 A: Yes.

24 Q: How did you become aware of it, how did
25 you know of it?

1 A: The Gleaner.

2 Q: Well, the Gleaner didn't tell you, you
3 saw something in the Gleaner?

4 A: Yes, I saw something in the Gleaner.

5 Q: And what was that?

6 A: Who took over the loans from Joslin.

7 Q: Oh, you saw a notice in the Daily
8 Gleaner indicating to you that Jamaican
9 Redevelopment Foundation had taken over
10 the loans from Dennis Joslin
11 Incorporated?

12 A: Yes.

13 Q: Up to when you saw the notice in the
14 Gleaner, had you been dealing with
15 Dennis Joslin?

16 A: No, sir.

17 Q: Now, when you saw the notice, did you do
18 anything?

19 A: I spoke to my lawyer.

20 Q: Now, having spoken to your lawyer, did
21 anything happen?

22 A: Not as far as I remember.

23 COMM. BOGLE: Just a minute. Debtor 12 mentioned that
24 they had no dealing with Dennis Joslin.

25 MR. CODLIN: Yes, sir.

1 COMM. BOGLE: But his lawyer wrote to Dennis Joslin in
2 2002, I mean they got a reply from
3 Dennis Joslin in 2002 which would imply
4 that - well, it actually states that his
5 lawyer Pearson and Company wrote to
6 Dennis Joslin in May 22, 2002 which
7 would indicate that there were dealings
8 with Dennis Joslin.

9 MR. CODLIN: Mr. Chairman, you are referring to
10 Exhibit 3?
11 COMM. BOGLE: Yes.

12 MR. CODLIN: Well, with respect the letter from
13 Dennis Joslin may not necessarily mean
14 that Debtor 12 was dealing with them. My
15 understanding of the communication is
16 that Dennis Joslin for whatever reason
17 was saying that you have an obligation
18 to me and that obligation embraces a
19 debt of \$xx Million. I have not seen
20 anything...

21 COMM. BOGLE: I differ. Because in the letter from
22 Dennis Joslin it says re your client
23 Debtor 12, **"In response to your**
24 **letter dated May 22, we advised that the**
25 **accounts balance..."** which tells me that

1 Pearson and Company wrote to Dennis
2 Joslin enquiring about the balance and I
3 would imagine that that would have been
4 on the instruction of Debtor 12.
5 MR. CODLIN: Yes.

6 COMM. BOGLE: And therefore by extension Debtor 12 had
7 been dealing with Dennis Joslin.

8 MR. CODLIN: I brought to your interpretation, from
9 my part, all I see here is that Dennis
10 Joslin is making certain allegation,
11 which not having a copy of
12 Mr. Pearson's letter, I am unable to say
13 if that was an acknowledgement of a
14 dealing with Dennis Joslin. But be that
15 as it may Mr. Chairman, I think subject
16 to your ruling, we could proceed.
17 COMM. BOGLE: You may proceed.

18 MR. CODLIN: Thank you. Indeed you said in your
19 affidavit that you were advised of the
20 sale of your property to Jamaican
21 Redevelopment Foundation some time in
22 2001?

23 A: Yes, sir.
24 Q: Paragraph 5, Mr. Chairman. And that was
25 when they wrote to you telling you that

1 you were owing \$xx Million?

2 A:

3 Yes, sir.

4 Q:

5 The same sum as appearing on Exhibit 4? Yes.

6 A:

7 Since Exhibit 4 has already been marked, Mr.

8 Q:

9 Chairman and your members, may we proceed

10 without seeking to have it as an exhibit...

11 It is in exhibit already.

12 Thank you sir. After you got communication

13 from Jamaican Redevelopment Foundation

14 they continued to apply interest, you say,

15 compounded at 50% with monthly rest,

16 paragraph 6 sir.

17 Yes.

18 Is that correct?

19 COMM. BOGLE:

20 (No answer)

21 MR. CODLIN:

22 Debtor 12, Counsel is asking you...

23 A:

24 Yes.

25 COMM. BOGLE:

26 Yes, Debtor 12?

27 Yes.

28 A:

29 Okay. Now, may I ask you sir,

30 MR. CODLIN:

31 A:

32 Mr. Chairman and your members, if we

33 Q:

34 could look at page 42. Jamaican

35

1 Redevelopment Foundation after 2002
2 continued to send you statements of
3 account reflecting how much they alleged
4 you were owing?
5 A: Yes.
6 There is one such statement, isn't it
7 Debtor 12, on page 42?
8 A: Yes, sir.
9 Q: That statement shows that on the 21st of
10 January, 2008 you were owing xx Billion
11 and xx Million - read out the
12 figure for me.
13 A: \$xx.
14 Q: \$xx?
15 A: \$xx.
16 Q: Do you believe you were ever owing that
17 sum?
18 A: No, sir.
19 Q: Any at all?
20 A: No, sir.
21 Q: Mr. Chairman and your members, may I ask
22 that this document be marked Exhibit 5.
23 COMM. BOGLE: So marked MLS.
24 MR. CODLIN: Thank you.
25 MRS. PHILLIPS: That is page 42?

1 COMM. BOGLE: Yes, page 42.

2 MR. CODLIN: Would you kindly look at page 43. Do you
3 see there Jamaica Gazette Settlement
4 Proclamations, Rules and Regulations et
5 cetera?

6 A: Yes, sir.

7 Q: That Gazette is dated Thursday May 30,
8 2002?

9 A: Yes.

10 Q: On page 46 there is another one dated
11 Tuesday January 21, 2003, page 46?

12 A: Yes, sir.

13 Q: Page 47 there is another one dated
14 January 5, 2004.

15 MRS. PHILLIPS: 46 has no signature, Commissioners.

16 COMM. BOGLE: 46 is incomplete in terms of the
17 signature.

18 MR. CODLIN: Thank you Mr. Chairman and my learned
19 friend. We will ensure that the balance
20 is supplied.

21 Page 48 another one dated December 1,
22 2004.

23 A: Yes.

24 Q: Page 49 another Gazette dated
25 January 20, 2006?

1 A:
2 Q: Yes.
3 Page 50, another one dated January 3,
4 A: 2007.
5 Q: Yes.
6 And finally, page 51 dated January 10,
7 A: 2008.
8 Q: Yes.
9 You have seen and read these Gazettes,
10 A: Debtor 12?
11 Q: Yes, sir.
12 May I ask Mr. Chairman and your members, if
13 these Gazettes could be admitted into
14 COMM. BOGLE: evidence?
15 MR. CODLIN: Yes.
16 Perhaps you may deem it prudent to
17 number them in the way you did the
18 MRS. PHILLIPS: Mortgage Instruments?
19 COMM. BOGLE: I believe they are already in evidence. In
20 MRS. PHILLIPS: another case, yes.
21 MR. CODLIN: In the same enquiry.
22 MRS. PHILLIPS: Yes, but for our purpose, sir.
23 COMM. BOGLE: I have no difficulty.
24 For our purpose we will. So it will be
25 ML6(a) to (h).

continued...

1

2 COMM. BOGLE: I have no difficulty. ML6(a). Sorry
3 (a) to (g).

4 MR. CODLIN: I have got (a) to (h). Is it 6(a) to
5 (h), sir?

6 COMM. BOGLE: Yes.

7 MR. CODLIN: Thank you very much.

8 MRS. PHILLIPS: There are two for the year 2002, the
9 earlier one was replaced by a later --
10 'A' is the first one and 'B' the second
11 one.

12 MR. CODLIN: Thank you counsel, you are very kind.

13 MRS. PHILLIPS: You are welcome Mr. Codlin any time.

14 COMM. BOGLE: Yes we agreed 6A to 6H.

15 MRS. PHILLIPS: Yes.

16 MR. CODLIN: Now Debtor 12, by the time we reached the
17 year 2008, did Jamaican Redevelopment
18 Foundation place a receiver in your
19 property?

20 A: Yes, sir.

21 Q: Pursuant, it says, to recovering
22 xx dollars?

23 A: Yes.

24 Q: When the receiver was placed on your
25 property, were you able to visit your

1 property and exercise any control over
2 it?

3 A: No, sir.

4 Q: Why not?

5 A: I was in the hospital in Florida.

6 Q: Yes, all right. Were you in the
7 hospital before or after the receiver
8 was appointed?

9 A: Before.
10 MRS. PHILLIPS: Could I ask my friend if the receiver
11 was a receiver appointed under the
12 mortgage?

13 COMM. ROSS: I am afraid I am not a lawyer, I have no
14 idea, I am just a little confused by the
15 language and the receivership, who the
16 whole property was mortgaged to, I am
17 not sure how receiver came into the
18 picture.

19 MR. CODLIN: Could I kindly indicate to Your
20 Lordships how that happens or perhaps
21 ask my learned friend who seems to be
22 anxious to address you on it.

23 MRS. PHILLIPS: I will be happy to. Under Section 125
24 of the Registration of Titles Act, a
25 mortgagee is given the power to appoint

1 a receiver in relation to the mortgaged
2 property and this is clearly what was
3 done in this case because when you look
4 at the Certificate of Titles that has
5 been exhibited as ML1A, you will see
6 recited there that the receiver was
7 appointed under the Instrument of
8 Mortgage, so this is not a receiver
9 appointed under debenture, it is
10 receiver appointed under the mortgage.
11 MR. CODLIN: All I was saying that the receiver was

12 sent in by the mortgagee and I don't
13 think my friend is disputing that
14 COMM. BOGLE: No, she's simply clarifying.

15 MR. CODLIN: I am sure.

16 COMM. BOGLE: Go ahead.

17 MR. CODLIN: Much obliged, sir. May I ask you to
18 kindly look at page 52, sir. Debtor 12

19 could you kindly turn to page 52?

20 A: Yes, sir.

21 Q: And 53, do you see a signature on page
22 53?

23 A: Yes, sir.

24 Q: Now, what is it that is on page 52?

25 A: I wrote to the Minister, Audley Shaw

1 pertaining to the loan of xx
2 dollars that they say I owed.

3 Q: That they say you owed. I see. Now if
4 it accords with your approval
5 Mr. Chairman and your members, may I be
6 permitted to read this letter?

7 COMM. BOGLE: Go ahead please.

8 MR. CODLIN: Your letter to the Minister, that is
9 Minister Shaw, it reads and I am going
10 to read it.

11 **I write to you as one of those Jamaicans**
12 **who has suffered untold damage by the**
13 **treatment which the previous Government**
14 **has enabled FINSAC to mete out to us.**
15 **My case is plain and simple.**
16 **Sometime in about 1992, I borrowed \$xx**
17 **million from a commercial bank. I have**
18 **paid xx millions of dollars,**
19 **principal and interest and now I am**
20 **being told that I owe over xx**
21 **dollars. My matter is in the courts,**
22 **but I have to appeal to you in light of**
23 **the article appearing in the Daily**
24 **Newspaper with regard to the Prime**
25 **Minister's impending intervention.**

1 2 I attach a copy of the said article.
3 4 If it pleases you Mr. Chairman and your
5 6 members we didn't feel it prudent to attach
7 8 a copy of that because we think it can be
9 covered otherwise.
10 Jamaican Redevelopment Foundation is seeking
11 to sell out my property which is the lifeblood
12 to my family on the basis that I owe over xxn
13 dollars. Honourable Minister, my lawyers
14 have told me that under the Money Lending Act
15 a person charges interest in excess of xx
16 percent, the charge is deemed to be excessive
17 and the court can set aside the agreement and
18 the person loses his principal and any
19 interest charged. Do I understand the law to
20 be, sir, that the poor shopkeeper in
21 Christiana who lends a man \$xx and charges xx
22 percent interest loses both his principal and
23 interest, yet the previous Government set up
24 FINSAC and Jamaican Redevelopment Foundation
25 to charge xx percent compounded at monthly
rest when the same Money Lending Act forbids
the charging

1 of compound interest and the previous
2 Government through the Minister who you have
3 succeeded exempts Jamaican Redevelopment
4 Foundation and leave it at large? May I ask
5 Honourable Minister if you are going to
6 continue to exempt this foreign entity from
7 legal provisions by following the Minister
8 whom you have succeeded and exempt his
9 foreign entity each year from the law of the
10 land? What justification could there be to
11 exempt this foreign entity and let it believe
12 that it is at large to charge xx percent
13 interest when the ordinary Jamaican cannot
14 do that? I implore you, sir, to urge the
15 Honourable Prime Minister to look into the
16 matter with total urgency as Jamaica must be
17 the only place in the world where a man has
18 borrowed xx million, repaid xx millions of
19 dollars and find himself owing xx dollars.
20 Your kind and urgent response shall be very
21 greatly appreciated.

22 When you wrote that letter to the
23
24
25

1 Minister, what was your state, what
2 state you were in in relation to your
3 property?

4 A: Well, I was out of my property, they put
5 me out of my property and took over the
6 place, ran the workers out of the
7 building and that was it.

8 Q: You were dispossessed of your property,
9 your workers were turned out?

10 A: Yes, immediately they entered the office
11 and everything.

12 Q: Whose office?

13 A: My office.

14 Q: After the receiver came in, were you
15 able to earn a livelihood from your
16 property?

17 A: No, sir.

18 Q: Did you know Mr. Shaw before you wrote
19 him that letter?

20 A: Yes, sir.

21 Q: As far as you are aware, have you
22 received a reply to your letter?

23 A: No, sir.

24 COMM. BOGLE: Are you tendering the letter as an
25 exhibit?

1 MR. CODLIN: I shall be asking you Mr. Chairman and
2 your members to mark that letter as
3 exhibit, I think it's 7?

4 COMM. BOGLE: ML7.

5 MR. CODLIN: Yes, sir. Now sir, please look at page
6 54. That document represents a part of
7 the Budget Debate in Parliament during
8 the 2008/2009 Budget Presentation. It's
9 a long document, we have no intention of
10 asking the Commissioners to look at all
11 of it. You read portions of that
12 document, have you?

13 A: Yes, sir.

14 Q: Would you kindly turn to page 70. If it
15 pleases you Mr. Chairman and your
16 members, sir, may I ask you to turn to
17 page 70. May I read between 70 and 72.
18 The relevance of this I respectfully
19 submit is to show that Mr. Shaw who
20 uttered these words and who is Minister
21 of Finance having received Debtor 12's
22 letter, what he had to say. Page 70,
23 sir, beginning at the words Financial
24 Sector Collapse, Commission of Enquiry.
25 This is the Honourable Audley shave

1 addressing Parliament in the 2008, 2009
2 Budget Debate. **it's** there to see at the end.

3 "Mr. Speaker, I must agree with the
4 Opposition Spokesperson on Industry and
5 Commerce that the PNP Government guided the
6 economy through the most profound economic
7 transformation. Just ask the thousands of
8 employees of businesses which had to close
9 their doors on account of the financial
10 sector
11 collapse. While in Opposition the Jamaica
12 Labour Party made an attempt in the Senate
13 to launch an investigation. This was
14 blocked. We also appealed to the
15 universities to carry out a study on the
16 collapse. This was met with a lukewarm
17 response.

18 We maintain our stance and will
19 implement this year a Commission of Enquiry
20 that will specifically pinpoint the causes
21 of the collapse and will assist us as a
22 country to set down rules to avoid a
23 catastrophe ever befalling Jamaica again. On
24 this issue the

1 Commission of Enquiry has turned to the
2 financial sector meltdown of the 1990s. Mr.
3 Speaker, as a result of a prolonged period
4 of high interest rates due to
5 inappropriate policy decisions,
6 inappropriate because of the timing and lack
7 of understanding by the then Government of
8 these decisions, we had the most devastating
9 bomb to hit Jamaica Mr. Speaker. I speak not
10 of the PNP but the financial sector meltdown
11 of the 1990s.

12 Interest rates during this period Mr.
13 Speaker ranged between seventy to one
14 hundred and forty percent which small and
15 medium sized businesses were
16 expected to pay. How ironic it is Mr. Speaker
17 that today we are discussing how impractical
18 it is for Alternate Investment Schemes to
19 make returns of over one hundred percent but
20 yet the then Minister of Finance expected
21 companies to be able to make profits so as
22 to finance interest rates of over one hundred
23 percent.
24

1 Obviously many of these medium to small
2 businesses could not afford to pay these
3 rates of interest and so thousands of
4 businesses became bankrupt which created a
5 ripple effect throughout the banking
6 sector. The devastation affected every
7 sphere of Jamaica's business sector and
8 private life. As a result, the Government
9 was forced to intervene which it did, but in
10 a very haphazard manner. In some instances
11 depositors received ninety percent of
12 their deposits with no interest and in
13 other instances the depositors received
14 one hundred percent of their deposits plus
15 interest. In some entities the
16 Government's decision to place them under
17 temporary management was decisive, for
18 others, liquidity support was given by
19 the Government although it was known that
20 these
21 entities were technically insolvent at
22 the time of the liquidity support. The
23 Bank of Jamaica now has debts of sixty
24 billion on its books which is owed to them
25 by the Government of Jamaica in

1 part as a result of this crisis.
2 Borrowers from the failed financial
3 entities including individuals with
4 mortgages, companies and other business
5 entities were treated differently
6 depending on their connection. I repeat,
7 depending on their connection. Some
8 loans were reduced or written off,
9 others were forced to pay the hideously
10 high interest rates; as one borrower
11 stated the other day, they were sold to
12 the Texans like cattle.
13 As part of the bail-out strategy, FINSAC
14 was created where non-performing loans
15 and assets of selective financial
16 entities were transferred.
17 Subsequently, these non-performing loans
18 were sold to Joslin/Jamaican
19 Redevelopment Foundation at 20 cents in
20 the dollar, eighty percent discount, a
21 discount that the Government never saw
22 fit to offer there own people".

23 COMM. BOGLE: Are you entering this document?

24 MR. CODLIN: I am seeking to enter this document as
25 Exhibit 8, **sir**, and ask you to kindly

1 mark it accordingly.

2 COMM. BOGLE: Go ahead.

3 MR. CODLIN: I do not think it's necessary for me to
4 read any more of this document at this
5 stage, I understand that counsel will be
6 afforded the privilege of making a
7 final address at some time in the
8 future.

9 COMM. BOGLE: Sure.

10 MR. CODLIN: Anything else I have to say in relation
11 to that document therefore maybe dealt
12 with then.

13 COMM. BOGLE: Just before you continue, as is
14 customary we will take a break for ten
15 minutes today.

16 MR. CODLIN: Much obliged Mr. Chairman, thank you,
17 sir.

18 COFFEE BREAK

19

20

21

22

23

24

25

1 ON RESUMPTION:

2 COMM. BOGLE: Ladies and gentlemen, this Enquiry is

3 now back in session, Debtor 12 please

4 note that you are still under oath.

5 DEBTOR 12: Thank you sir.

6 MR. CODLIN: Debtor 12.

7 A: Yes, sir.

8 Q: Look at paragraph 12 of your Witness

9 Statement?

10 A: Yes, sir.

11 Q: Read what it says for me.

12 A: Borrowers...

13 Q: Just read it to yourself. I have a

14 question to ask you. You have read it?

15 A: Yes sir.

16 Q: **'Borrowers from the same financial**

17 **entities, it is including individuals**

18 **with mortgages, companies and other**

19 **business entities were treated**

20 **differently depending on their**

21 **connection. Some loans were reduced or**

22 **written off.'**

23 As far as you are aware, was your loan

24 reduced?

25 A: No, sir.

1 Q Was it or any part of it written off? No,
2 A: sir.
3 Q
4 . Did FINSAC or anyone offer you the right to
5 redeem your property by paying xx percent of
6 the value of the loan? No, sir.
7 A: Were you offered the redemption of your
8 Q property by paying less than what you owed?
9 No, sir.
10 A: You are aware, were you aware, Debtor 12 --
11 well, first of all, has Jamaican
12 Redevelopment sold your property? Yes,
13 sir.
14 A: Do you recall what year that was done, it
15 is 2008 or '09?
16 Q: 2008.
17 A: Is it eight or nine.
18 Q: One of those.
19 A: Are you aware that an offer was made to you
20 to purchase your own property for a certain
21 Q: sum? Please don't name any sum. No, sir.
22 You did not see a letter from your lawyer
23 A: saying that your property was
24 Q:
25

1 being offered to you for sale?

2 A: No, sir.

3 Q: You were present in court when former
4 Minister of Finance, Dr. Omar Davies,
5 gave evidence, not in court, in the
6 Commission here, and you heard your
7 lawyer questioned him?

8 A: Yes, sir.

9 Q: Look on paragraph 17 please. Paragraph
10 17, Mr. Chairman and your members, just
11 one extract, sir.
12 COMM. BOGLE: And this is extract from.

13 MR. CODLIN: Dr. Davies' evidence.
14 Do you have paragraph 17 before you
15 Debtor 12?

16 A: Yes, sir.

17 Q: When Dr. Davies was asked, he is quoted
18 as saying, **"I granted the exemption on**
19 **the advice that JRF had purchased the**
20 **portfolio bad debts'"**. You were here when
21 that was said?

22 A: Yes.

23 Q: Look at paragraph 21 please. Now kindly
24 look on page 75. Do you see the words at
25 the top, **'Franchise Tax Certificate of**

1 Account Status'?

2 A: Yes.

3 Q: Across from the word '**status**', on the
4 left, do you see the words, '**not in good**
5 **standing**'?

6 A: Yes.

7 Q: This document is dated the 25th of
8 November, 2008?

9 A: Yes.

10 Q: We are asking if it pleases, Mr.
11 Chairman and your members, to admit this
12 document in evidence as Exhibit 9?

13 COMM. BOGLE: Can you expand a little on this for the
14 records because you have mentioned the
15 name of the document and then you have
16 singled out, '**status -- not in good**
17 **standing**', but you you have not said
18 anything more. Who is not in good
19 standing, what is not in good standing?
20 Nothing is complained about the document
21 for the records.

22 MR. CODLIN: This document, we submit, as is stated
23 at the top, is a Franchise Tax
24 Certificate of Account status of
25 Jamaican Redevelopment Foundation as is

1 shown under the writings, **Certificate of**
2 **Accounts Status Officers and Directors**
3 **Information.** This Jamaican

4 Redevelopment Foundation was
5 incorporated in the state of Texas in United
6 States of America, yet it is named Jamaican
7 Redevelopment Foundation. One school of
8 thought might well be that according to Mr.
9 Shaw it was getting Jamaican asset at xx
10 percent so that is a form of development.
11 This is brought to your attention, Mr.
12 Chairman and your members, and we hope we
13 will have a chance of addressing on it
14 further when we come to make our final
15 appeal.

16 There are other similar documents which we
17 will deal with but I hope what I have just
18 said is sufficient to bring your minds to the
19 process of thought that I am following, if
20 it pleases you.

21 Earlier Mr. Chairman and your members, one
22 of your members indicated, I think it was
23 Commissioner Ross, indicated that there was
24 some written evidence as regards the loan
25 that Debtor 12 had

1 obtained and before I complete this
2 statement, sir, may I just address that.
3 Beginning at page one, Mr. Chairman and
4 your members, this page one and other
5 pages show clearly that the difference
6 between xx and xx million appears
7 to have arisen because the mortgage
8 instruments were regularly up stamped,
9 no doubt to take care of interest and
10 other charges. That I submit Mr.
11 Chairman and your members is evidence
12 from the last entry on the document on
13 page one, Miscellaneous 816036, they
14 have a mortgage that has been up stamped
15 to cover a further indebtedness of
16 xx million dollars, entered therein
17 on the 2nd of June 1994. That could well
18 be the process which accounted for the
19 difference between xx and xx,
20 bearing in mind that one would have been
21 having payments based on Debtor 12's
22 evidence. In any event it is easy to
23 ask him.

24 MR. GARCIA: I am sorry to interrupt my friend but in
25 the course of commenting on the up

stamping, my friend did make reference to the possibility of up stamping taking place to cover interest and ordinarily that is not done because the original mortgage - and if one looks at the entry for the original mortgage, it is noted that it was stamped to cover xx million dollars with interest. So ordinarily the mortgage is stamped to cover the principal amount. If it is up stamped, usually it is because of some

[illegible]

because of interest. And, of course, the both entries do refer to a further indebtedness, the two entries below refer to a further indebtedness of xx million dollars.

MR. CODLIN: In response to my learned friend, my understanding is that the banks often turn interest into principal by calling it so.

COMM. ROSS: For those of us not schooled in these matters, are these additional liabilities that are being stamped on the document? In other words, if we are

1 to get the total indebtedness, are we to
2 add all of these up stampings?

3 MR. CODLIN: Sir, in order to answer your question I
4 believe the best thing to do is to
5 ascertain from Debtor 12 what is the
6 position.

7 MRS. PHILLIPS: Or from Mr. Chen Young when he comes.
8 COMM. BOGLE: Well, the thing is, do we have any loan
9 documents? We have the mortgage here
10 and we have the mortgage document and we
11 have the Certificate of Titles but what
12 I do not see is any actual loan
13 document.

14 MR. CODLIN: Well, Mr. Chairman, we do not have any.
15 If the other side has any and is
16 prepared to make it available to you and
17 your members, we should be obliged.
18 However, the best we can do at the
19 moment to assist the Commission is to
20 ascertain from Debtor 12.
21 COMM. BOGLE: The other question that I would like to
22 ask is the reference made on more than
23 one occasion and also of paragraph
24 three, the submission of Debtor 12 that
25 he has paid in excess of xx million

1 dollars. Do we have any evidence of any
2 of those payments, do we have any
3 receipts? What do we have to confirm the
4 payment of those amounts?

5 MR. CODLIN: I don't have any receipt to confirm
6 them. I will endeavour and that is,
7 following previous endeavours, to obtain
8 from Debtor 12' previous attorneys any
9 documents that they may have in relation
10 to that, but as you would have known Mr.
11 Chairman, at that time I was not in the
12 picture and I have not received any. If
13 there is any, you have my assurance that
14 I will obtain it and let the Commission
15 have it.

16 COMM. BOGLE: That is very important because for us to
17 understand at least the movement of the
18 principal and to take into consideration
19 payments, then it is important that we
20 have some proof of payments.

21 MR. CODLIN: Yes.

22 COMM. BOGLE: Continue on the question of Mr. Ross,
23 page 34 is indicating principal sum -
24 well this document purportedly signed in
25 February 2001 which is on page 37 and

1 that is saying, principal sum of xx
2 million,
3 xx and it is also
4 identifying separately interest due of
5 xx dollars,
6 . So, the question
7 therefore is, the xx million,
8 that is the xx million plus additional
9 sums that were given to or loaned to
10 Debtor 12 as against a capitalization of
11 interest, because this instrument is
12 separating the interest due which is
13 xx million dollars.

14 MR. CODLIN: Yes. Mr. Chairman I see that, sir. As
15 you would have seen, Mr. Chairman and
16 your members, there is no evidence by
17 signature or otherwise of the document
18 that was executed either '92 or '94,
19 yet a document which started out by
20 saying it was made in '92 purports to
21 end up as having been made in 2002.
22 Indeed in other proceedings elsewhere
23 and examining this document, counsel
24 wants to describe it as a documentary
25

1 hermaphrodite.

2 COMM. ROSS: Mr. Codlin, while we are on this
3 document, do you have any evidence of it
4 being signed by the institution? Eagle
5 Commercial Bank had been taken over by
6 the government entities in the late
7 1990s.

8 MR. CODLIN: Yes.

9 COMM. ROSS: So I was just wondering who would have
10 executed this documentation on their
11 behalf in 2001. That is one question. I
12 think we should also note that this
13 mortgage document, 2001 mortgage refers
14 to a default on an original mortgage.
15 It appears that there is some sort of
16 restructuring. I am just wondering two
17 things, one, why Debtor 12 signed the
18 document himself and, two, who would
19 have signed on behalf of the bank since
20 the bank had been operating for some
21 years at the time.

22 MR. CODLIN: Most obliged to you, sir, and that is
23 one of the questions that we are going
24 to seek to address to you in due course,
25 but at this stage you will kindly recall

1 that this morning I asked Debtor 12 to
2 search the entire document to see if the
3 signature which he appended in '92 or
4 '94 appears anywhere on this document
5 and he said, no. Because this document
6 seems to suggest that it was made in '92
7 but signed in 2002.

8 COMM. ROSS: It refers to a mortgage taken out in '92
9 but it states quite clearly - it is a
10 totally different document.

11 MR. CODLIN: Yes, '92, but as you have kindly pointed
12 out, sir, we have not seen any signature
13 indicating the signing of the '92
14 document.

15 COMM. ROSS: We don't have that document.

16 MR. CODLIN: So if I may say so, with due respect,
17 Mr. Commissioner and your members, we
18 may have to take that document as we
19 find it.

20 COMM. ROSS: I am trying to understand this document
21 here.

22 MRS. PHILLIPS: Mr. Commissioners, if I may, and, of
23 course, subject to what your counsel
24 advises you, my understanding of the law
25 is that a mortgage needs to be signed by

1 the party to be charged. It maybe
2 signed by the guarantor but it has to be
3 signed by the party to be charged which
4 is the debtor. So there is nothing
5 remarkable about it not having a
6 signature. Usually there is a guarantee
7 under the Statute of Laws Act.
8 (inaudible)

9 COMM. ROSS: Could we ask Debtor 12 why he signed
10 that.

11 MR. CODLIN: You will recall that he said that he
12 didn't signed the, what did he call it,
13 'the literature', he said he signed it
14 and the Chair questioned him and he said
15 that he signed it blank.

16 COMM. ROSS: Why sign it at all, whether blank or
17 filled out, why would he sign this
18 document?

19 MR. CODLIN: When?

20 A: He is your lawyer and you trusted him
21 and you just signed some papers and
22 leave them.

23 Q: I will pursue the point you have raised,
24 Mr.Chairman. Debtor 12...

25 A: Yes, sir.

1 Q: Just relax and listen. You got a loan
2 in '92, '94 and you signed a mortgage
3 then?
4 A: Yes.
5 Q: You told the Commission that you have
6 not seen that signature on the document
7 that is before you now?
8 A: That is true.
9 Q: You also told the Commission that you
10 signed the document, that you signed
11 without the literature, meaning blank,
12 the document that has been presented now
13 as the mortgage which was made in '92
14 and signed in 2002?
15 COMM. BOGLE: Debtor 12, if you look on page 37 of the
16 document, there are some initials to the
17 right of paragraphs 11 and 12. Do you
18 recognize those initials?
19 A: No, sir.
20 COMM. BOGLE: Go ahead, Mr. Codlin.
21 MR. CODLIN: Thank you sir. So you don't recognise
22 the initials?
23 A: No, sir.
24 Q: They are not yours?
25 A: No, sir.

1 Q: And the only thing you can recall is that
2 you went to your lawyer's office and that
3 signature was appended when there was no
4 writing at all on that page?
5 Yes, sir.
6 A: Do you recall if there were other pages
7 Q: attached to the one which you signed and
8 those pages were also in writing?
9 Blank forms.
10 A: Yes?
11 Q I always sign blank forms and leave it with
12 A: my lawyer.
13 Do you understand what I have asked you? Yes.
14 Q When you signed that blank form, were there
15 A: other pages attached to it and if so were
16 Q: they also blank?
17 No.
18 No what?
19 A: I signed this paper...
20 Q: Yes...
21 A: I didn't sign the wording.
22 Q: We hear that. All I am asking you, if when
23 A: you signed that paper if there were
24 Q:
25

1 other pages attached to that paper?

2 A: No, sir.

3 COMM. ROSS: Am I to understand that he appended his
4 signature to a blank sheet of paper?

5 MR. CODLIN: That is what he said.

6 COMM. ROSS: And it has now been transformed into
7 this document?

8 MR. CODLIN: I am sorry, sir.

9 COMM. ROSS: And that blank sheet of paper has become
10 this document that we are looking at?
11 MR. CODLIN: According to what he is saying.

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13 Continued...

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1 MR. CODLIN: Now, Debtor 12, after you borrowed the \$xx
2 million in 1992/1994, did you borrow any
3 other sum from that bank?

4 DEBTOR 12: No, sir.

5 Q: In particular did you borrow a
6 \$xx million?

7 A: No, sir.

8 COMM. BOGLE: Debtor 12, when was the first time that
9 you saw this document, the one at pages
10 25 to -- and I said 'first time', first
11 time after signing the blank page. When
12 was the first time you saw this?

13 A: Page 25?

14 COMM. BOGLE: Twenty five through to 38. You said you
15 signed page 37 in blank so I am asking
16 now, when was the first time that you
17 got this document which has your
18 signature on it.

19 A: A couple months ago.

20 COMM. BOGLE: You got it from whom?

21 A: I just saw it appear, I don't quite
22 remember where I got it from.

23 MR. CODLIN: May I assist you, Mr. Chairman?

24 COMM. BOGLE: Yes.

25 MR. CODLIN: Debtor 12, the document in your hand

1 there, the one that the Chairman is
2 averting your mind to; you were
3 involved, you are in involved in other
4 proceedings in the court with Jamaican
5 Redevelopment Foundation, am I correct?

6 A: Yes, sir.

7 Q: While so involved, documents were shown
8 to you between 2007 and now?

9 A: Yes.

10 Q: Can you recall if that document is one
11 of those shown to you as having been
12 produced by the other side, that is,
13 Jamaican Redevelopment Foundation?

14 A: That is the one with my signature, sir?

15 Q: Yes.

16 A: Very strange. I don't remember them.

17 Q: You don't remember?

18 A: No.

19 Q: Rut it might well have been?

20 A: Yes, quite possibly.

21 Q: I see.

22 MRS. PHILLIPS: While my friend is waiting to go to his

23 next question, could I just attempt to
24 clarify something that is in relation to
25 that question that Commissioner Ross

1 just asked?

2 If you look at the title, Commissioner
3 Ross, you will see that the assets of
4 Eagle were vested in Citizens Bank by
5 way of a Vesting Order made in 1999. So
6 that Citizens Bank Limited would have
7 been carrying all the assets that were
8 vested in it which included these
9 Mortgages and you will see that
10 registered on the title in the second to
11 last entry on the left hand side. So the
12 Court has made an order vesting the
13 assets of Eagle in - it is actually a
14 transfer of business on a Vesting Order
15 as you can see there.

16 COMM. ROSS: Would that have entitled them to carry
17 on work in the name of Eagle Commercial
18 Bank?

19 MRS. PHILLIPS: It certainly would have, yes. It
20 certainly would have and after their -
21 the Vesting Order though made in 1999
22 you will see was not registered on the
23 title until the 12th of March, 2007. So
24 between 1999 and 2007 I would imagine
25 that is what they would have done.

1 MR. CODLIN: May I just say this sir, in answer to my
2 learned friend, it is common ground
3 between us that certain documents are
4 not enforceable unless they are
5 completed, by law, and one of the
6 processes of completion is to register
7 the document and stamp it.

8 As a matter of interest therefore, we on
9 this side do not necessarily agree that
10 if a document was executed in 1999,
11 there is an entitlement to register it
12 in 2007 and call it valid.

13 MRS. PHILLIPS: I am not speaking about any document
14 executed into 1999, I am speaking about
15 a Court Order that was made in 1999.

16 MR. CODLIN: Yes, whatever.

17 MRS. PHILLIPS: It is an Order which the Supreme Court
18 made in 1999.

19 COMM. BOGLE: While we are it, can you -- as I
20 indicated earlier that we would like to
21 see proof of payments, can you
22 communicate to the previous attorney,
23 Anthony Pearson and Company, requesting
24 details of payments made by Debtor 12 and
25 could you send us a copy of that letter.

1 MR. CODLIN: Indeed sir. We may have access to one
2 or more letters indicating to
3 Mr. Pearson that payments have been made
4 to the Bank.
5 As a matter of fact sir, it is just
6 about a few minutes from the time that
7 you had set to adjourn the proceedings
8 for today and we should be most obliged
9 if we could be afforded the few more
10 minutes because you have my assurance
11 that one of the first things I will do
12 after you have adjourned today is to try
13 and make contact with Mr. Pearson and
14 obtain what evidence we can from him so
15 that it will be available to you and
16 your members tomorrow.

17 COMM. BOGLE: In addition to payment, any other
18 information that they might have
19 relative to this situation.
20 MR. CODLIN: Certainly, sir.

21 COMM. BOGLE: Okay. At this time therefore, this
22 Enquiry will be adjourned for the rest
23 of the day and we will reconvene
24 tomorrow morning at 9:30.

25 MRS. PHILLIPS: The schedule says afternoon. The

1 schedule says Mr. Poyser is supposed to
2 come tomorrow afternoon.

3 COMM. BOGLE: We will convene tomorrow afternoon.
4 However, it will be the continuation of
5 this witness.

6 MRS. PHILLIPS: That I have no problem with.

7 COMM. BOGLE: Right so we will convene tomorrow
8 afternoon at 2 o'clock and it will be a
9 continuation of this witness.
10 Therefore, Debtor 12, you are being
11 required to return tomorrow afternoon at
12 2 o'clock. So we will reconvene
13 tomorrow at 2 o' clock, not at 9:30 a.m.

14 DEBTOR 12: Okay sir, thanks.

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16 Adjournment

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