

Debtor : John Doe 1 and  
John Doe 2 (section 2)

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 FEBRUARY 24, 2011 Part 1

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross  
Mr. Warrick Bogle

COUNSEL FOR THE COMMISSION

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

Mrs. Sandra Minolt-Phillips Attorney-at-Law  
Mr. Gavin Gore - Attorney -at-Law

REPRESENTING MR. PATRICK HYLTON

Mr. Dave Garcia - Attorney-at-Law

ATTORNEY MARSHALLING EVIDENCE FOR THE COMMISSION Ms

Judith Clarke

REPRESENTING MR. GEORGE HUGI

Dr. Christopher Malcolm

GIVING EVIDENCE

John Doe 1 John Doe

1 Thursday February 24, 2011.

2 COMM. BOGLE: Good morning, ladies and gentlemen. This  
3 Enquiry is now in session. And may I  
4 have the names of the Attorneys for the  
5 records.

6 MR, GOFFE: Gavin Gaffe instructed by Myers,  
7 Fletcher and Gordon. I appear for  
8 Jamaican Redevelopment Foundation Inc.

9 MS. CLARKE: I am Judith Clarke. I appear for the  
10 Commission for the purpose of marshaling  
11 the evidence of the affected persons.  
12 The affected person this morning is  
13 John Doe 1.

14 COMM. BOGLE: Thank you very much. The last time  
15 John Doe 1 was here Mr. Gaffe was just  
16 about commencing his cross-examination  
17 and therefore at this time then we call  
18 John Doe 1 to the witness stand and ask  
19 Mr. DePeralto to have him sworn in. 20

21 (Witness sworn)

22

23 COMM. BOGLE: Thank you very much, Mr. Secretary.  
24 Mr. Gaffe.

25 MR. GOFFE: Thank you.

1 Morning, John Doe 1.

2 JOHN DOE 1: Morning Mr. Gaffe.

3 COMM. BOGLE: The lighting is poor we have asked them  
4 to do something about it. We hope it  
5 will be done shortly.

6 MR. GOFFE : Sure sir.

7 Before I get into the questions  
8 John Doe 1, you will recall that we had  
9 discussed there being three mortgages,  
10 at least three mortgages that you had  
11 signed, and that took us up to the  
12 figure of \$xx million. I put two of  
13 the mortgages in, I believe one was  
14 LP-51 and one was LP-50. I actually  
15 have another document which I would like  
16 to to show you. This document is the  
17 third mortgage.

18 (Document shown to witness)

19 John Doe 1, could you look at the final  
20 two Pages of that document actually page  
21 number 19. Can you say if you recognize  
22 your signature on that document.

23 A Yes.

24 Q Do you also recognize the seal of New  
25 World Development Corporation Limited?

1           A           Yes.

2           Q           You accept that you signed this document  
3                       on behalf of New World Development  
4                       Corporation?

5           A           Yes.

6           Q           Could I then ask that it be entered  
7                       as...

8   COMM. BOGLE:       LP-53.

9   MR. GOFFE;         Being a mortgage given by New World  
10                      Development Corporation Limited to  
11                      Horizon merchant Bank and Horizon  
12                      Building Society dated 27th May, 1995  
13                      to secure the sum of \$xx million at an  
14                      original rate of interest of x% per  
15                      annum.

16                      John Doe 1, are you licenced as a real  
17                      estate dealer or developer/salesman  
18                      under the Real Estate Dealers and  
19                      Developers Act?

20          A           You asked me about three questions.

21          Q           Are you registered in any of those  
22                       capacities?

23          A           I am licensed as a dealer, I am licensed  
24                       as a developer. You don't license as  
25                       developer, as soon as you have the

1                   development you get the certificate to  
2                   be a developper so I automatically I  
3                   am not licensed as a salesman as such  
4                   because I do employ salesmen; my licence  
5                   is above that of a salesman.

6           Q           Sorry, I am not sure I understood the  
7                   answer.

8           A           You asked me if I am licensed as a  
9                   salesman.

10          Q           Are you licensed as a salesman?

11          A           No.

12          Q           Are you licensed as a dealer?

13          A           Yes.

14          Q           Are you licensed in any other capacity?

15          A           I have a certificate as a developer.

16          Q           Thank you sir. Now on the last occasion  
17                   we were speaking about the payments  
18                   which you made to Horizon Merchant Bank  
19                   Limited and you had presented a Schedule  
20                   of Payments and it was recorded as LP--20  
21                   (a). What you had said, we had a  
22                   discussion rather, about whether these  
23                   payments were deposits ans whether they  
24                   were trust moneys or moneys which were  
25                   paid to Horizon Merchant Bank and if 1

1 recall your final position last occasion  
2 was that once the moneys were paid to  
3 the bank it was the bank's money.

4 That's correct?

5 A That's correct, and those moneys...

6 Q John Doe 1, you have answered the  
7 question perfectly, sir?

8 A Okay.

9 Q Now, what that means then is that the  
10 moneys were not paid into a trust  
11 account as described in the Real Estate  
12 Dealers and Developers Act?

13 A I don't see the relevance but they were  
14 to our Attorney, Jennifer Messado and  
15 Company.

16 O So the Trust account was with your  
17 Attorney, not with the Bank.

18 A That is correct.

19 Q Why was there no Trust Account with the  
20 bank?

21 A In what bank. Because it was easier  
22 to...

23 MS. CLARKE: I would like to intervene. I do not  
24 believe that the witness has said there  
25 was no Trust Account with the bank.

1 MR. GOFFE: John Doe 1, was there a Trust Account at  
2 the bank?  
3 A No.  
4 MS. CLARKE: I still believe that the broad question  
5 should be put in relation to whom and in  
6 whose name and by whom.  
7 MR. GOFFE: I am asking the questions.  
8 MS. CLARKE: If the witness...  
9 MR. GOFFE; I would like to ask the question.  
10 MS. CLARKE: I am speaking, Counsel.  
11 If the witness had said that the money  
12 was paid into a Trust Account with his  
13 Attorney, you know, without my spelling  
14 it out it begs the question, was there a  
15 Trust Account at the bank set up the  
16 witness? Was there a Trust Account at  
17 the bank set up by his Attorney? Was  
18 there a Trust Account at the bank  
19 relative to what; by whom?  
20 MR. GOFFE: Mr. Chairman, I think I am asking the  
21 questions. It is a cross-examination.  
22 Counsel cannot advise me the *order in*  
23 which I am to ask the questions and the  
24 nature of the questions I am to ask. If  
25 she is objecting to the question then



1 she should object to it.

2 MS. CLARKE: And I am objecting on the basis that the  
3 question as put is unfair to the witness

4 *in that* it is not for purposes here  
5 complete so that the witness can answer  
6 in a way that will be fair to him; yes  
7 or no.

8 COMM. BOGLE: Okay. Mr. Goffe, can you rephrase the  
9 question?

10 MR. GOFFE: I am not sure why I should rephrase the  
11 question. The question was, was there a  
12 Trust Account at the bank and he can  
13 answer. If he thinks it was set up by  
14 someone else he can answer, but it is  
15 not for me to ask a question to lead him  
16 in the answer which I don't know he has.  
17 I have asked him a very general  
18 question, he can answer it to the best  
19 of his ability.

20 MS. CLARKE: Is Counsel asking him was there a Trust  
21 Account at the bank that existed at all  
22 in any name whatsoever at a given time?

23 MR. GOFFE: I have not asked that question.

24 MS. CLARKE: Perhaps that is what he wants to know.

25 MR. GOFFE: I have asked a question and the witness

1 can answer it.

2 COMM. BOGLE: Okay. Mr. Goffe, you asking whether or  
3 not John Doe 1 knows if there was a  
4 Trust Account for the scheme at the  
5 bank?

6 MR. GOFFE: No, sir. The question I have asked him  
7 *is, because I have* referred to the  
8 payments which were made, I have asked  
9 him if there was a Trust Account at the  
10 bank. He can answer the question and if  
11 he can't, he can tell me why he can't  
12 answer the question.

13 MS. CLARKS: I do not want to persist but I believe  
14 Counsel well appreciates the difficulty  
15 here.

16 MR. GOFFE: He hasn't expressed any difficulty at  
17 all.

18 MS. CLARKE: There are as we know, several Trust  
19 Accounts at the bank. Is Counsel  
20 referring to a Trust Account relative to  
21 a particular matter? Was there a Trust  
22 Account that the witness held in his  
23 personal capacity? Was there a Trust  
24 Account relative to a property in  
25 respect of which we are not dealing now?

1 Was there a Trust Account set up at the  
2 bank by his Attorney for her own  
3 purposes irrelevant to these  
4 proceedings? I believe to be fair to  
5 the witness he needs to ask was there a  
6 Trust Account relative to whatever and  
7 by whom. It cannot be as broad as that  
8 if we are to be fair to the witness.

9 COMM. BOGLE: The question is that we are dealing with  
10 the matter at hand and Mr. Goffe is  
11 asking him whether or not there was a  
12 Trust Account and Mr. Goffe had  
13 identified this and said in relation to  
14 these was there a Trust Account. I think  
15 that the client....

16 MS. CLARKE: That is not what Mr. Goffe said,  
17 respectfully, sir.

18 MR. GOFFE: Exactly, what I said, Mr. Chairman,  
19 thank you.

20 MS. CLARKE: 'in relation to these'. I thank you,  
21 Mr. Chairman, for rephrasing the  
22 question because that now makes sense to the  
23 *witness* and should make sense to the witness  
24 if in relation to these' precedes, was there  
25 as Trust Account.

1 MR. GOFFE: John Doe 1, could you answer the  
2 question, please.  
3 A Can you ask it again, sir, I got...  
4 Q I know you would have so let's try  
5 again. John Doe 1, are you aware of  
6 there being a Trust Account at the bank  
7 in relation to these moneys?  
8 A No. I have to understand exactly what  
9 you are saying. Which bank? You mean  
10 Horizon Merchant bank?  
11 Q No, John Doe 1, let's not get cute here  
12 today.  
13 MS. CLARKE: I crave your indulgence. I am objecting.  
14 MR. GOFFE: I am just asking the man a question.  
15 MS. CLARKE: Counsel, I am raising an objection,  
16 That is my objection because I believe  
17 the purpose here is to cross-examine the  
18 witness and not to contend with him  
19 about whether he wishes to get cute or  
20 not. I believe counsel's sole purpose  
21 is to put questions to the witness by  
22 way of cross-examination. You know,  
23 conduct matters on every side.  
24 MR. GOFFE: Yes, John Doe 1, as we were saying, you  
25 know which bank we are speaking about,

1 don't you?

2 A Well I have my account, clients account  
3 at my personal bank.

4 Q John Doe 1 do you not see LP-28(a)  
5 speaking about payments made to a bank.  
6 Which bank do you think we are speaking  
7 about?

8 A I hope you are speaking about Horizon  
9 Merchant Bank.

10 Q Okay, alright

11 A The answer is no.

12 Q No, there was no trust account?

13 A Nor we didn't open one there.

14 Q Why did you not open one there?

15 A Because it was not necessary. It was  
16 more convenient for us to use our  
17 client's account, because the Real  
18 Estate Board would do their audit and as  
19 soon as it was ready for us to transfer  
20 these funds, we would send it to our  
21 attorney, Jennifer Massado and Company  
22 and then the client's attorney, as you  
23 know as you are an attorney, would send  
24 their portion to same Jennifer Massado  
25 and company.

1           Q           As a licensed salesman °- sorry, as a  
2                        licensed dealer, could you explain to us  
3                        what is the purpose of having a trust  
4                        account set up at a bank to receive the  
5                        funds?

6           A           I am not au fait with trust accounts in  
7                        real estate transactions as a broker.  
8                        We have client's account.

9           Q           And the client's account is not the same  
10                      as a trust account?

11          A           No. And you ought to know that,  
12                      Mr. Gaffe.

13          Q           Tell us then what is a client's account?

14          A           Client's account you lodge any money  
15                      that the client deposits on a property  
16                      and it is there as lawyers do and used  
17                      as is requested. If the clients request  
18                      for it to be returned you return it. As  
19                      soon as it is ready for the property to  
20                      be transferred, it is sent to the  
21                      attorney.

22          Q           So was there a client's account at  
23                      Horizon Merchant Bank into which these  
24                      funds were put?

25          A           No, we never have any account.

1           Q           Why was there not a client account,  
2                       John Doe 1?  
3           A           It has been explained before, Mr. Goffe.  
4           Q           No, you explained in relation to a trust  
5                       account, I am asking the question now in  
6                       relation to a client account?  
7           A           No. And emphatically no, Mr. Goffe. The  
8                       only account we have with Horizon  
9                       Merchant Bank is the loan.  
10          Q           Excellent. Thank you sir.  
11                       John Doe 1, could you look at page 20 of  
12                       the document just handed to you. For the  
13                       record I will explain that this document  
14                       just handed to you is the Real Estate  
15                       Dealers and Developers Act. Look at  
16                       page 20, section 24 of this Act. Have a  
17                       read of it. You don't need to read it  
18                       aloud. When you finish reading 24 I  
19                       want you to read 25.  
20                       Please **let** *me know* when you have  
21                       finished reading. You finished?  
22          A           No, sir. Apart from finishing because  
23                       we know these....  
24          Q           So you don't need to read it any longer?  
25          A           Not really, no.

1 Q Did *you* also *get* a chance to read  
2 section 25, subsection 4? It's at the  
3 top of page 22. I want to make sure you  
4 read that part of it.

5 A Mr. Goffe, I am not as young as you, why  
6 don't you ask me this in stages, because  
7 what I want to say here the trust that  
8 .is....

9 Q I haven't asked you any questions, you  
10 know, John Doe 1, I have asked you to  
11 read the document and I am giving you as  
12 much time as you require to read page 22  
13 where it says section 25 subsection 4,  
14 top of the Page in the left hand corner.

15 A Page 22?

16 Q Yes, sir.

17 A Twenty-two and what?

18 Q The paragraph that appears at the top of  
19 that page.

20 A Yes,

21 Q All right. Now that we have read those  
22 two sections, could you explain to the  
23 Commission why it was that the part  
24 payments, deposits, or whatever term you  
25 would like to use, was not paid into a



1 clients' account?

2 MS. CLARKE: I am objecting to the question and all  
3 that preceded it. I believe that in any  
4 kind of proceedings, be it court  
5 proceedings or an enquiry, the matter of  
6 relevance is paramount. What we are  
7 here enquiring into was not as to the  
8 propriety of John Doe 1's action as a  
9 real estate developer and whether he did  
10 what correctly and how he paid the money  
11 in. The question here is as to the  
12 propriety, probity, accountability of  
13 JRF in its dealings with John Doe 1.  
14 These are the issues he has raised  
15 before the Commission.  
16 What is more, Members of the Commission,  
17 is that based on the exhibits we have  
18 seen, there has been nothing coming  
19 forward to show that the payments that  
20 were made to the particular institution  
21 be it the bank, FINSAC by John Doe 1  
22 were ever frowned upon or rejected on  
23 the basis that they may have come from  
24 an improper source or they may not have  
25 been lodged to the the account in the

proper way. Based on the schedule that he has put forward certain payments were made and it is to be presumed by the absence of anything to the contrary on the objection that they were accepted and converted to the bank's purposes. So if it is that Counsel is seeking to question the witness's dealings as a real estate broker in terms of his complying with the law, I am raising an objection on the basis that for the purpose of these proceedings, inasmuch as you may want to undermine the witness's creditability or his credibility, the approach is so absolutely irrelevant, and we should really bear in mind what the approach to the Commission is about and therefore what the party against whom the the contentions have been made has to make. What case does he have to make? Is it relevant as to whether or not at this point John Doe 1 has complied with the provision of sections 24 and 25 of the Act. Counsel led the witness to section

1                   25; the Act has its own sanctions, which  
2                   is what section 25 is about, where any  
3                   person who contravenes is subject to the  
4                   the force of law. So I am saying, for  
5                   the purposes of these proceedings the  
6                   line of questioning is not relevant at  
7                   all.

8    COMM. BOGIE :       Based on advice, I'll allow the  
9                   question.

10   MS. CLARKE:        Very well, sir.

11   JOHN DOE 1:        Mr. Chairman, can I say something, sir?  
12                   I served on the Real Estate Board, I was  
13                   not only a dealer. I am a member of a  
14                   profound Rotary Club; I am a member of  
15                   the Private Sector Organization; the  
16                   Chamber of Commerce. I wrote a book and  
17                   a quarterly magazine serrtizi\_ng the seven  
18                   million Jamaicans in the Diaspora. If  
19                   my reputation was questionable I would  
20                   not be in those positions and I am going  
21                   to refuse to answer some of these  
22                   questions because if JRF had worked with  
23                   me properly I would not be here today  
24                   giving these these statements. When I  
25                   think also of my colleagues who have

1                   borrowed less than what I have borrowed  
2                   and they are....

3   MR. GOFFE:           Commissioner, could I ask that this  
4                   witness be controlled. He hasn't  
5                   answered the question yet.

6   COMM. BOGLE:       He is through now, you may proceed.

7   MR. GOFFE:           Thank you.

8                   Would you answer the question please.

9           A           Which one question you were asking, Mr.  
10                   Gaffe?

11          Q           You are right to not know, to not  
12                   remember, it has been such a long time,  
13                   but the question I am asking again is,  
14                   hopefully I'll get through it this time,  
15                   having read the two sections that I just  
16                   pointed you to, I am asking you to  
17                   explain to the Commission why in the  
18                   circumstances of this case you thought  
19                   it was unnecessary to place these  
20                   purchasers' moneys in a clients' account  
21                   with the bank?

22          A           From our understanding, Mr. Goffe, you  
23                   are an educated man, the word trust and  
24                   client account is synonomous in that  
25                   regard.

1 Q It is now?

2           A                           Yes, as it was then, and that when we  
3                                       used the clients' account, we didn't  
4                                       have to have trust account. Trust is  
5                                       when you trust me to hold something for  
6                                       you. That is what it is; that is my  
7                                       understanding.

8 Q You are not asking the question,  
9 John Doe 1. I am asking you why it was that  
10 you didn't put it into a client account?

11           A           For the umpteenth time, because it was  
12                       put in the client's account.

13 MS. CLARKE: He did answer the question.

14 MR. GOFFE: I am asking you at the bank; you said  
15 there was no client's account at the  
16 bank.

17            A            At my bank.

18 Q And my question is . . .

19 MS. CLARKE: And that's exactly the problem. We are  
20 now faced with the problem that one had  
21 foreseen before because the witness did  
22 say he had a client account, you know.  
23 Counsel keeps saying 'the bank'. Now the  
24 witness is saying I did have a client  
25 account at my bank and he is now being

1 told that he said he didn't have a  
2 client account. And the questions we  
3 are being asked as to why wasn't there a  
4 trust account; why wasn't there a client  
5 account; which is why one was craving  
6 the specificity at the very outset.

7 MR. GOFFE: Mr. Chairman, he said: "Emphatically  
8 no", was the answer to to my question as  
9 to whether he set up a client account.

10 COMM. BOGLE: In fact though, the question that you  
11 asked him was whether or not he had a  
12 client's account at Horizon Bank which  
13 he said no to. He didn't say he didn't  
14 have a client's account at another bank  
15 because at the time it was  
16 specifically...

17 MR. GOFFE: I asked the questions in relation to  
18 these funds and if these funds were paid  
19 into a client's account and he said no.

20 COMM. BOGLE: At the bank, and remember we identified  
21 the bank. He did say no, he did not  
22 have a clients' account at the bank  
23 which is the referenced bank, Horizon,  
24 but he did not say he did not have a  
25 client's account at another bank.

1 MR. GOFFE: No, Mr. Chairman. I must remind you.  
2 that I am speaking about these moneys  
3 here and these moneys here were paid, he  
4 says, into Horizon Bank.

5 MS. CLARKE! The witness wouldn't know, you know. In  
6 fairness to everybody, if one is asking  
7 did you have a client account, the  
8 witness would not know unless at every  
9 juncture, I am submitting, you speak in  
10 relation to one, because a very general  
11 question was asked of the witness and it  
12 is what has led to where we have now  
13 found ourselves.

14 COMM. ROSS: I am getting a little bit confused, I  
15 don't recall, and maybe evidence was  
16 presented, that said these moneys  
17 represented here came directly from  
18 clients.

19 MR. GOFFE: His evidence, if I might help you there  
20 sir, was that the only moneys which were  
21 paid to Horizon Merchant Bank were paid  
22 out of sale proceeds when units were  
23 sold and he said that this is a  
24 statement from his lawyers, I think he  
25 said, prepared by his lawyers to show

1 the payments which were received by them  
2 from purchasers and paid to Horizon  
3 Merchant Bank and he went further to say  
4 that these payments were not paid into a  
5 client account at Horizon Merchant Bank,  
6 The question which I have asked him is  
7 why were these payments not put into a  
8 client account at Horizon Merchant Bank.

9 MS. CLARKE: And that is not what was asked.

10 COMM. BOGLE: Can you let Commissioner Ross finish,  
11 please.

12 COMM. ROSS: That's not the understanding I had based  
13 on what John Doe 1 just said. What I  
14 thought I heard John Doe 1 say was that.  
15 clients paid funds to him which were  
16 placed in his client's account and  
17 transferred from there to the lawyer and  
18 the lawyer transferred funds to the  
19 bank. Is that correct?

20 JOHN DOE 1: Yes, that is so.  
21 That is what I thought I heard him  
22 saying a while ago.

23 MR. GOFFE: That's not what I understood him to be  
24 saying and the records show that what he  
25 said was, it is held by the lawyer first



1 in a client account and then the lawyer  
2 pays it to the bank and once it is sent  
3 to the bank by the lawyer it is the  
4 bank's money.

5 A Yes. That is also true.

6 Q The sequence is very different because  
7 the question then is where is this  
8 client's account. And I am only speaking  
9 about where it ends up which is what  
10 this document here is giving us evidence  
11 of and I am asking why these payments  
12 here did not end up in a client account  
13 at Horizon Merchant Bank?

14 MS. CLARKE: I believe the question my friend is  
15 pre-supposing without establishing, and  
16 I am not saying that all of those moneys  
17 would at the point when they are paid  
18 represent clients' money, and we have  
19 seen based on the evidence that the  
20 witness has given and the exhibits that  
21 some of them were the balance from sales  
22 that were completed. So I believe it  
23 may be a little unfair even in point of  
24 law as my friend knows, to pre-suppose  
25 that any sum listed there as going to

1                   the bank would at the stage when it is  
2                   paid, inasmuch as it may have been paid  
3                   by clients, be clients' money.

4   MR. GOFFE:       I must object now because what my friend  
5                   is doing is her re-examination and  
6                   providing speculation answers while the  
7                   witness is in cross-examination. She is  
8                   not objecting to a line of questioning;  
9                   she is simply saying the question is  
10                  unfair because there could be this  
11                  answer which is of course, pointing the  
12                  witness to an answer which he may want  
13                  to give an cross-examination. She will  
14                  have her opportunity to re-examine him  
15                  and if it is that I have confused the  
16                  situation as she thinks I have, she has  
17                  her chance but she is not to use an  
18                  objection as an indication to the  
19                  witness of a potential ambiguity in the  
20                  question so that he can pick the right  
21                  answer and I would ask the Commission to  
22                  be very firm in its control of how the  
23                  witness is being prompted prior to  
24                  re-examination.

25   MS. CLARKE:     Mr. Chairman, I would not presume upon

1 the firmness of the Commission or even  
2 make any suggestions. I completely  
3 respect what may emanate but I believe  
4 that I am well within my right to object  
5 to a question on the basis that the  
6 question as put is unfair to the  
7 witness.

B MR. GOFFE: That is actually not a basis to object  
9 to a question.

10 MS. CLARKE: It is quite a proper basis. If it is  
11 that the question could lead the witness  
12 to a place of confusion where it is not  
13 clear whether he is being asked a  
14 general question or relative to a  
15 specific matter, a question may be  
16 unfair as put. Thank you.

17 COMM, BOGLE: Mr. Gaffe, can you continue.

18 MR. GOFFE: Thank you, Mr. Chairman.  
19 So that we can understand very clearly  
20 the situation here, we have your  
21 evidence here sir, and the evidence you  
22 gave to this Commission on the last  
23 occasion was that it was held in trust  
24 when it was in the hands of Jennifer  
25 Messado and Company and then you said

1                   when it was paid to the bank it became  
2                   the bank's money.  
3                   Do you wish me to repeat the evidence  
4                   you gave or do you accept that as what  
5                   you said?

6                   A                   Repeat.  
7 8

9                   Continued.....  
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1           Q:           In order to repeat the evidence, I will  
2                       quote you verbatim sir, I don't want to  
3                       be unfair. Actually, it was the  
4                       Commissioner, Commissioner Bogle who  
5                       said **"So in this case it would be**  
6                       **Jennifer Messado and company once they**  
7                       **release the funds the bank *then use it*",**  
8                       and your answer was "That is correct".  
9                       So John Doe 1, do you accept that the  
10                      money may have been in trust when it was  
11                      with Jennifer Messado and Company but  
12                      that when it was sent to the bank by  
13                      Jennifer Messado and Company it was not  
14                      sent into any client account or trust  
15                      account whichever term you wish to use  
16                      and that in fact it was the bank's  
17                      money?

18          A:           In simplicity, sir, yes.

19          Q:           Thank you. The question then I have to  
20                       ask you, sir, is why did you not set up  
21                       a client or trust account at Horizon  
22                       Merchant Bank so that the funds which  
23                       were paid by Jennifer Messado could have  
24                       been paid into that client or trust  
25                       account?

1 A: Mr. Goffe, can I answer.

2 Q: I wish you would.

3 A: You know, having listened to this case  
4 and others, I realize to go into  
5 business I should have done law and  
6 accounting.

7 Q: Could you answer the question  
8 John Doe 1?

9 A: I am answering it now. Because it was  
10 simple for me to do it the way I did it  
11 and it was done that way and that's  
12 history now.

13 Q: Thank you sir, Now, is it not true  
14 John Doe 1 that -- is it not true  
15 John Doe 1 that the reason you are  
16 threatened with incarceration now is  
17 because you did not comply with the  
18 provisions of the Real Estate Dealers  
19 Act?

20 A: Mr. Goffe, Mr. Goffe ....

21 COMM. BOGLE: John Doe 1,

22 A: Would I be arrested if I walk out there,  
23 sir, Mr. Goffe, you are passing your  
24 place man, no, I don't believe that,  
25 threatened by who with incarceration,

1                   for what, that is not what I am here for sir,  
2                   I am *sorry*.

3       MS CLARKE:       I would like to assist here because the  
4                   evidence, there is no basis for the question  
5                   based on the evidence-in-chief that has come  
6                   forward. The witness has said in his witness  
7                   statement clearly as to why he is now  
8                   threatened with incarceration because of  
                 his inability to comply with a court order  
10                  in a civil proceedings, an order for  
11                  specific performance that he provided that  
12                  ..

13       MR. GOFFE:       She's answering the question on behalf  
14                   of the witness?

15       MS CLARKE:       It is in the evidence, I am not giving  
16                   any answer.

17       MR. GOFFE:       She is reminding the witness of the  
18                   evidence, I must object,

19       MS CLARKE:       The evidence is that he was incarcerated  
20                   because he cannot provide the title  
21                   which JRF has been refusing to release.

22       MR. GOFFE:       My friend is trying to remind the  
23                   witness of the evidence.

24               A:       Mr. Chairman, I am not suffering from  
25                   dementia, but what the other one is

1                   called now, hypertension, diabetic among  
2                   others, so I think you better ask  
3                   Mr. Goffe to be more kind.

4    COMM. BOGLE:       Basically, we need to get back some  
5                   control, we need to get -- John Doe 1,  
6                   if a question is asked it might upset  
7                   you a bit....

8           A:           It has upset me.

9    COMM. BOGLE:       But if you say no, that finishes it. In  
10                   other words, if a question is asked by  
11                   Mr. Goffe and the answer is no, say no  
12                   and so I am saying there is no need to  
13                   allow your blood pressure to get too  
14                   high, a question is asked, no, and then  
15                   we move on.

16   MS CLARKE:        You know, Mr. Chairman, I believe I  
17                   really need to point out that inasmuch  
18                   as it is cross-examination that is  
19                   proceeding now, we are not at large and  
20                   if it is that there is no basis for a  
21                   question, if you have not laid a basis  
22                   for it, it ought not to be put, it ought  
23                   not to be put, there is no basis for it.

24   MR. GOFEE:        Could I get an answer to the question  
25                   please.



1           A:           Pardon me.

2           Q:           I am asking if I could get an answer to

3                       the question now.

4           A:           I hope you could rephrase it, ask a

5                       different question.

6           Q:           I like the question just as it is. Could

7                       you answer it please.

8           A:           Ask it again let me hear what you are

9                       saying.

10          Q:           The question I asked you, isn't it true

11                       that the reason why you were threatened

12                       with incarceration is because you have

13                       failed to comply with the provision of

14                       the Real Estate Dealers and Developers

15                       Act?

16          A:           I shouldn't answer that question but it

17                       is no. The reason is because JRF

18                       refused to allow me to get the title for

19                       a lot that has been paid for five times,

20                       that same lot and I will explain further

21                       when it comes to that.

22          Q:           Could you tell us now the order that was

23                       made in the court proceedings which is

24                       the subject of the threat of

25                       incarceration.

1 A: Well how do we reach there, at that  
2 stage Mr. Goffe? It is a long..  
3 Q: Answer the question?  
4 A: .. and to be frank I forgot to take the  
5 plans from my office. The order was, I  
6 was very very close to FINSAC...  
7 Q: The order, sir, what were the terms of  
8 the order?  
9 A: The terms of the order, I can't even say  
10 what it is now.  
11 Q: Tell us what is the nature of the order  
12 please?  
13 A: The nature of the order is because we  
14 had one lot number.  
15 Q: No, no, John Doe 1, I am asking you what  
16 the order was compelling you to do?  
17 MS CLARKS: Mr. Commissioner...  
18 MR. GOFFE: He is answering the question.  
19 A: Ms Clarke, it is okay, I will answer.  
20 To produce a title for a man who built a  
21 house on one of the lots that is  
22 encroached on other people's property  
23 that entails us to have three titles for  
24 the one lot; JRF needed all the  
25 information, that is not one of the lots

1                   they have in their possession, there is  
2                   no title for that lot because of the  
3                   encroachment, so we need to get three  
4                   titles. We got one of the titles, that  
5                   part was no man's land. Actually sir,  
6                   it was a mistake by my surveyor and the  
7                   Real Estate Board who gave the approval  
8                   and the KSAC and the Town Planning and  
9                   twenty-six Government departments who  
10                  approved it, stamped, all the studies  
11                  done and stamped it approved. When the  
12                  title returned to me, well, the person  
13                  who bought the property, when the plan  
14                  returned to me we did not get the title  
15                  because they were at the bank, Horizon.  
16                  Q:           Did the court order you, sir, to produce  
17                               the title or refund the money to the  
18                               purchaser?  
19                  A:           To produce the title because by that  
20                               time the man built a house valued at  
21                               xx million dollars.  
22                  Q:           John Doe 1, did the court ask you to  
23                               To produce the title?  
24                  A:           Did it give you an alternative, did it  
25                  Q:

1 say why you should refund the money to the  
2 purchaser?

3 A: No.

4 Q: You were not given that option?

5 A: They said that privately to the builder of  
6 the house and he refused, that would have  
7 been the easiest way.

8 Q: Did you tell the court that you are  
9 unable to produce a title for these  
10 various reasons?

11 A: Yes.

12 Q: And the court nonetheless ordered you to  
13 produce the title?

14 A: Yes.

15 Q: And so the failure of you to produce the title  
16 is the reason why you were threatened with  
17 incarceration?

18 A: And may I say incarcerated, not just  
19 threatened, yes.

20 Q: When were you actually incarcerated,  
21 sir?

22 A: On Christmas Eve, Thursday the 23rd of  
23 December last year,

24 Q: And your evidence is that a bailiff came and  
25 took you to jail?

1           A:           That is correct, Trench Town because  
2                       there was no cell at Cross Road Police  
3                       Station, so they took me to Trench Town,  
4                       foreign lands.

5           Q:           I suggest to you, sir, that if the civil  
6                       court was going to order your  
7                       incarceration it would not have sent the  
8                       bailiff to carry it out?,

9   MS CLARKE:        I object to the suggestion because I  
10                      don't believe that this is something  
11                      within the ambit of this witness to say  
12                      what the civil court would have done if  
13                      it were doing a certain thing.

14          Q:           I will rephrase the question.  
15                       John Doe 1, are there criminal  
16                       proceedings against you?

17          A:           No, again emphatically no, it's a civil  
18                       proceedings, why they didn't send me to  
19                       Richmond Prison instead, I would do some  
20                       reading down there and continue writing  
21                       my history.

22          Q:           John Doe 1, have you ever been to court  
23                       at the Half Way Tree Resident Magistrate  
24                       Court, have you ever been there?

25          A:           No.

1           Q:           And have you ever stood up before a  
2                        judge at the Supreme Court and heard a  
3                        judge say that you are to be  
4                        incarcerated for any period of time?  
5           A:           No.  
6           Q:           Okay, what is the basis -- were you  
7                        handed any document by the bailiff  
8                        indicating to you the reason why you  
9                        were being taken into lock up?  
10          A:           *Mr. Goffe, I am not a lawyer you know.*  
11          Q:           Were you handed any document?  
12          A:           I know *the man was a bailiff* because I  
13                        have met the man on different occasions.  
14          Q:           Were you handed any document?  
15          A:           No.  
16          Q:           Did the bailiff tell you his authority  
17                        for taking you to the lockup?  
18          A:           He said 'you have the title', I said  
19                        'no', he said 'John Doe 1, don't want  
20                        any explanation from you, come with me'.  
21                        I don't want to be shot, I am in  
22                        Jamaica, you know, although I am a  
23                        British citizen, I am living in Jamaica  
24                        right now, I know what happens here.  
25          Q:           How long were you in lock-up?

1           A:                   I was in the custody *of the* police, I  
2                               took sick and went to hospital from  
3                               there.  
4           Q:                   You were not actually incarcerated? I  
5           A:                   was under arrest if you like.  
6                               Mr. Goffe, you can understand what I mean,  
7                               I was at the police station maybe about four  
8                               hours, five hours, time went so fast.  
9                               My question, were you told that you  
10          Q:                   could not leave the police station?  
11                               Most definitely, I was a prisoner. You  
12          A:                   were placed under arrest?  
13          Q:                   I was a prisoner, yes.  
14          A:                   Were you charged with anything?  
15          Q:                   For not producing the title -- charged by  
16          A:                   who again? I do not understand these  
17                               things.  
18                               By anybody.  
19          Q:                   I don't understand.  
20          A:                   My question, were you arrested and  
21          Q:                   charged?  
22                               I am not a lawyer, I have never been a  
23          A:                   police officer, I am just a trying  
24                               business man, an entrepreneur, we call  
25

1                   it now, that is why I entered.... John  
2           Q:           Doe 1, it is a simple question, sir.  
3                   It is not a simple question.  
4           A:           You said you were arrested, my question, were  
5           Q:           you charged?  
6                   Mr. Goffe, in simplicity, I was taken by the  
7           A:           bailiff who is a limb of the law to the Cross  
8                   Roads Police Station, there were no cells  
9                   there, I was told, I was taken to Trench Town  
10                   and I was put in like a holding area.  
11                   You have not answered the question yet John  
12                   Doe 1. The question is, were you charged?  
13          Q:           I was charged to my knowledge.  
14                   You were charged with a criminal offence  
15                   then, were you not?  
16          A:           No, sir.  
17          Q:           You were charged with a civil offence? The  
18                   charge was there already, I was told by the  
19          A:           police, it's not criminality, its civil.  
20          Q:           Who charged you?  
21          A:           Mr. Goffe, why you are asking me that  
22  
23  
24          Q:  
25          A:



1                                   again?

2           Q:                   You said you were charged, I am asking

3                                   who charged you?

4           A:                   I was taken by the bailiff, you should

5                                   know,

6           Q:                   I am asking who charged you, was it a

7                                   police officer?

8           A:                   I am not going to answer that question

9                                   because I don't understand, you are

10                                  asking me questions that I cannot

11                                  understand.

12          Q:                   John Doe 1 you don't understand the

13                                  question that I asked you, who charged

14                                  you?

15          A:                   The bailiff came and took me, isn't that

16                                  the court order, isn't that enough, 1

17                                  didn't even get -- well, my attorney

18                                  came after among other friends and so

19                                  on. You asked you me if T was charged

20                                  again, for what, I was charged before,

21                                  it was a court order.

22          Q:                   I suggest to you, sir, that if you were

23                                  charged you were charged by the police

24                                  and not by the ...

25          A:                   The bailiff?

1 Q: Perhaps the bailiff.

2 A: I don't understand that, sir, so I can  
3 go and sue the police and the bailiff  
4 and the Government now then, I don't  
5 understand.

6 Q: I am suggesting to you, sir, the reason  
7 that you were charged, though it is  
8 connected to your civil suit is actually  
9 a criminal charge that was laid against  
10 you.

11 A: Mr. Goffe, what relevance that has to do  
12 with this, of my evidence right now?

13 Q: You can either refute the evidence or  
14 accept it.

15 A: I can't accept it, sir, because that is  
16 nonsense.

17 Q: Are you aware, sir, that there is  
18 currently litigation ongoing between  
19 Jamaican Redevelopment Foundation, the  
20 Registrar of Titles and the Real Estate  
21 Board in relation to property that you  
22 developed, sir?

23 Yes, because Jamaican Redevelopment, the  
24 Real Estate Board had caveat on the  
25 property that Jamaican Redevelopment has

1 sold or trying to sell.

2 Q: Do you know when these caveats were put  
3 on the titles?

4 A: Not a part of it, has to do with the  
5 Government and JRF.

6 Q: Do you know when it was put on the  
7 title

8 A: No, sir.

9 Q: But you know it was not put on the title  
10 before you borrowed the money, is that  
11 correct?

12 A: It was put on as soon as the properties  
13 were sold to protect the purchasers.

14 Q: When is that, sir?

15 A: When the properties were sold and we had  
16 to report to the Real Estate Board and  
17 they lodged a caveat on...

18 Q: So the caveat was not lodged before the  
19 construction was completed?

20 A: No, as soon as the purchasers or the  
21 prospective purchasers bought, then they  
22 lodged the caveat, they did that on all  
23 the properties, that is why they have  
24 not sold the one down in Discovery Bay  
25 yet.

1           Q:           Isn't it a requirement, John Doe 1, for  
2                       the interest of the Real Estate Board to  
3                       be noted on the title before the lots  
4                       are completed?

5           A:           Ask me that question again.

6           Q:           Isn't it a requirement, sir....

7   MS CLARKE:         Again, Mr. Chairman, I am raising  
8                       question as to relevance for the record  
9                       and I would ask if counsel -- I believe  
10                      there has been some sufferance here, and  
11                      I am asking that counsel makes clear at  
12                      this point certainly, as to the  
13                      relevance of the line of questioning in  
14                      relation to the Real Estate Act and  
15                      whether these were requirements .., given  
16                      what we are here for, I would ask that  
17                      counsel be asked to explain for the  
18                      benefit of everybody including the  
19                      witness, what is the relevance of the  
20                      question?

21   COMM. BOGLE:      Mr. Gaffe, I would suggest, and I myself  
22                       am a little ...

23           Q:           The relevance I think would become very  
24                       apparent in a moment because he just  
25                       admitted that there is litigation

1 pending; he is also admitting that the  
2 charge was only put on when the  
3 properties were being sold. The line of  
4 questioning.-

5 COMM. BOGLE: You are getting to the meat very  
6 shortly.

7 Q: Absolutely sir.

8 A: All of that was in my statement  
9 Mr. Gaffe, the charge, so it was not  
10 just put on, all of it is here, and JRF.

11 Q: You have not answered the question.

12 A: What is question?

13 Q: The question is whether you acknowledged  
14 that no charge was placed on the titles  
15 before the development was completed?

16 A: Let me explain to you from a Real Estate  
17 point.

18 Q: Before you explain, could you answer  
19 before you explain.

20 A: I have to explain for your  
21 understanding. The last person to sign  
22 off on a development is the Real Estate  
23 Board. They have the last say and they  
24 control. When the property is sold, when  
25 we get John Brown or Torn Stroke to

1 purchase we go to the Real Estate Board,  
2 we say Tom Stroke, and John Brown  
3 are purchasing this lot, then the Real  
4 estate Board lodge a caveat on behalf of  
5 John Brown, Tom Stroke, so they could  
6 not lodge the caveat before you get  
7 individuals to purchase the properties.  
8 But you acknowledge that the lodging of  
9 the caveat would have protected the  
10 interest of the purchasers so that they  
11 could recover their moneys in case the  
12 mortgagee try to exercise their power of  
13 sale?

14 A: Their money is yes, but could I say  
15 also that...

16 Q: Answer the question first.

17 A: I just want to say it for the benefit of  
18 the Commission.

19 COMM. BOGIE: No, John Doe 1, you answer the question.

20 A: In that case I have to answer you not  
21 straight again because the Commission  
22 needs to be educated as to what is  
23 happening.

24 Q: You can do that on another occasion, the  
25 question I am asking you now is in

1 relation to the return of the money to  
2 purchasers, I am suggesting to you, sir,  
3 that. the reason why the purchasers could  
4 not get their moneys back is because you  
5 failed to comply with the provisions of  
6 the Real Estate Dealers and Developers  
7 Act?

8 A: What you mean by could not get their  
9 money back, from whom?

10 Q: Have neither gotten their titles, the  
11 ones who have not gotten their titles,  
12 have not gotten their titles and have  
13 not gotten refunded because you failed  
14 to comply with these provisions?

15 A: You would be very pleased to know sir,  
16 that I have paid back out of my pocket  
17 some of the clients, we have not started  
18 the Ocho Rios yet. The one that I did  
19 not and cannot pay back is the one who  
20 built his house, he is living there  
21 presently and has refused to even  
22 negotiate selling it.

23 Q: Can you answer the question?

24 A: The question is no.

25 Q: That is not the reason why they could

1 not get their money back?

2 A: No.

3 Q: Do you accept that if the charge had

4 been placed at the appropriate time, if

5 the charge had been placed, rather

6 let me rephrase it. Would you accept

7 that if you had acted differently in

8 anyway at all that the purchasers could

9 have been protected insofar as they

10 would have received their moneys

11 returned to them if the development

12 failed?

13 A: That is an insult to my intelligence and

14 I refuse to answer that, I have answered

15 it before.

16 Q: He has answered the question. Isn't it

17 true John Doe 1 that you are prohibited

18 from entering into prepayment contracts

19 where you have already charged the

20 property with a mortgage to a financial

21 institution?

22 A: I don't understand that.

23 Q: Okay. Look back at the Real Estate

24 Dealers and Developers Act. I am going

25 to help you out, look at section 26?



1 What page you are referring to now?

2 Q: Page 22, same page that we were on  
3 before, I want you to look at Section 26  
4 and I want you to read through from  
5 Section 26 I (a) and (b),

6 COMM. BOGLE: You can read it.

7 MR. GOFFE: I would be happy to. It says, sir, I am  
8 on page 22.

**9 A person shall not enter into a**  
**10 prepayment contract as a vendor in**  
**11 connection with any land which is or**  
**12 intended to be the subject of a**  
**13 development scheme to which Section 35**  
**14 applies unless**  
**15 a) The vendor under the prepayment**  
**16 contract is a registered developer and**  
**17 b) Such land is free from any mortgage**  
**18 or charge securing money or moneys worth**  
**19 other than a mortgage or charge in**  
**20 favour of an authorized financial**  
**21 institution referred to in the proviso**  
**22 tv Subsection 5 of Section 31.**

23 Having read that, sir, do you you agree  
24 with me that when you entered into the  
25 contract to sell these lots, you had



1                   complied to the letter it's not for me  
2                   to say now because you are speaking  
3                   about history. And the same thing  
4                   applies, we owned the property, we  
5                   bought it cash and it's going to cost  
6                   three times or more than we bought it  
7                   for to do the subdivision.

8           Q:           Do you agree with me John Doe 1, do you  
9                   agree with me that if you failed to  
10                  comply with Section 26 1(b) and you  
11                  mortgaged the property first that that  
12                  mortgage would be in priority to the  
13                  interest of the purchasers?

14          A:           I am not understanding what you are  
15                   asking.

16          Q:           Let me try and explain to you a little  
17                   different. Now, what this Act, and of  
18                   course you are licensed under this Act,  
19                   what this Act speaks about, the one  
20                   thing it speaks about is the priority of  
21                   the interest in the land and it says  
22                   that the purchaser who is protected, if  
23                   certain things are done and their  
24                   interest will rank over any bank or  
25                   financial institution. If those things

1 are not done, however, the bank will  
2 have priority over the purchasers and I  
3 am asking you now, sir, if you agree  
4 with me that if you had complied with  
5 Section 26 1(b) the purchasers would  
6 have had priority over Horizon Merchant  
7 Bank?

8           A:           Mr. Goffe, from the seventy-five  
9                       purchasers only about three.-

10 Q: You have not answered the question.

11 A: I am not going to answer it unless you  
12 understand it. For the seventy-five  
13 purchasers who have built their  
14 salubrious homes and living there right  
15 now that I am proud of, we are dealing  
16 with about three with Horizon and if you  
17 are making it that I was wrong to have  
18 done that for those people who are  
19 living in that scheme now and we are  
20 dealing with those we have faulted with  
21 because of the fault of JRF and trying  
22 to criminalize me, I don't think I can  
23 answer that question because I don't  
24 understand it scientifically or legally  
25 the way you are trying to put it so I am

not going to answer that question, I  
2 refuse to answer that question.

3 COMM. ROSS: The subsection of Section 26 also refers  
4 to Section 31, Section 26 (a) which  
5 seems to deal with the matter of  
6 construction financing and mortgaging  
7 properties with respect to the plan, is  
8 that of any relevance to this line of  
9 questioning, because I am wondering  
10 whether, John Doe 1, if you could  
11 explain the purpose of the mortgage from  
12 Horizon Merchant Bank.

13 A: Section 26 ..

14 COMM. ROSS: I am asking you whether the mortgage  
15 that you took from Horizon Merchant Bank  
16 was in relation to the purchase of the  
17 property or the development of it.

18 A: No, for infrastructure, roads, water,  
19 electricity, pavements and so on.

20 COMM. ROSS: I just wondered.

21 MR. GOFFE: The point I am trying to get clear, I am  
22 trying to get clear and as you have  
23 reached there I will jump there, is that  
24 what this Act provides is that if you go  
25 to a financier to get that kind of

1            financing for development, then you must do  
2            certain things including setting up a client  
3            account and having a charge registered on the  
4            land which would protect the purchasers so  
5            that those moneys are held in trust and if  
6            the development for any reason should fail,  
7            those purchasers would be protected. What I  
8            am saying if those conditions were not  
9            satisfied, no client account was set up and  
10           no charge was made, then what happens is the  
11           person would be in breach of Section 26 which  
12           means that the bank's charge now ranks in  
13           priority over the Real Estate and the  
14           purchaser's charge and so what happens now,  
15           the foundation which I have now laid is that  
16           it cannot be the responsibility of Horizon  
17           Merchant Bank or its successors in title to  
18           treat the purchasers with a priority that  
19           they are not afforded under the Act because  
20           of the failings of the developer to observe  
21           the conditions of that Act, that is really  
22           where we are going because the position which  
23           the  
24  
25

1 witness has put is that Jamaican  
2 Redevelopment Foundation should have  
3 released these titles even though its  
4 security had not been discharged because  
5 there were these contracts which had  
6 been entered into and our simple  
7 position is that, had the provision of  
8 this Act been followed, there would be a  
9 legal obligation to act in that manner,  
10 however, that not having been done,  
11 Horizon Merchant Bank was under no  
12 obligation to recognize the rights of  
13 the purchasers before recovering its own  
14 money and similarly any successors in  
15 title is in no worse position.

16 MS CLARKE: If I may, because my friend has  
17 submitted in law, I believe whereas I am  
18 not raising an objection, I would seek  
19 to be afforded an opportunity to  
20 indicate something at this point.

21 COMM. BOGLE: You can you do that when you are ebing  
22 reexamined. If you wish to clarify, I

23 would suggest that that might be the  
24 appropriate time.

25 MS CLARKE: Then I would like to be reminded to

1 address the submission, not a question,  
2 that was made by counsel.  
3 COMM. BOGLE: Please make a note of it, may I suggest.  
4 A: Chairman, may I say a very very  
5 important  
6 MR. GOFFE: Say it to Miss Clarke when I am  
7 finished.  
8 COMM. BOGLE: May I suggest also the same thing that I  
9 suggested to Miss Clarke that when she's  
10 re-examining she will give you the  
11 opportunity through her own questioning  
12 for to you to clarify any matter you  
13 would like to clarify or make any point  
14 you think is relevant.  
15 A: I am going to have a difficulty because  
16 I am going to refuse to answer some of  
17 these questions.  
18 COMM. BOGLE: That is your reservation but at this  
19 time let us try and move ahead because  
20 otherwise we will be here until Sunday  
21 afternoon which we really don't have  
22 that time. Let's see if we can get some  
23 order and move along. Mr. Goffe,  
24 MR. GOFFE: That you sir.  
25 COMM. BOGLE: Did you enter this in as an exhibit?



1 MR. GOFFE: I don't think I need to, sir.

2 COMM. BOGLE: Okay,

3 MR. GOFFE: In your statement to the Commission, you  
4 had said that New World Development  
5 Company Limited and New World Realtors  
6 Limited, and actually I am reading from  
7 paragraph 16 of your statement,  
8 continued selling some of the Belvedere  
9 and Chancery Hall lots. We continued  
10 servicing our debts and were not in  
11 arrears at the time when our debts were  
12 taken over by FINSAC. however, after  
13 this, our business spiral downwards as  
14 interest rates rose and compounded way  
15 beyond our ability to keep up with the  
16 payments as we were accustomed to. You  
17 remember saying that?

18 A: Yes.

19 Q: Do you remember what your interest rate  
20 was when you first borrowed money from  
21 Horizon Merchant Bank?

22 A: No, I think it might be x%, I think.

23 Q: You remember me showing you documents  
24 which indicated that it was seventy

25

percent per annum, sir?

1           A:           At a point it developed to that, yes.

2           Q:           At a point when, could it have been

3                       1994?

4           A:           Some time after.

5           Q:           After when?

6           A:           After I borrowed the money, yes.

7           Q:           When did you start borrowing money?

8           A:           I think it was 1993.

9           Q:           Isn't that the money which you borrowed

10                      at x%, sir?

11          A:           At that point in time, no.

12                      continued....

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1

2 MR. GOFFE: You remember what the interest rates  
3 were when you first borrowed the money  
4 from Horizon Merchant Bank?

5 JOHN DOE 1: No, I think it was x%.

6 Q: You remember me showing you a document  
7 that it was x%?

8 A: At a point developed to that, yes.

9 Q: At a point when?

10 A: Mr. Goffe, sometime after.

11 Q: After when?

12 A: After I borrowed the money.

13 Q: When you started borrowing the money?

14 A: I think it was 1993.

15 Q: Isn't it that the money was borrowed at  
16 x%, sir?

17 A: At that point in time, no.

18 Q: But you remember borrowing money at x%?

19 A: Originally, no.

20 Q: But you remember signing a Mortgage  
21 which had a x% interest rate?

22 A: I signed a restructured - and I am not  
23 too sure what the interest rate was. I

25

24 know the interest rate was high but I  
25 can't say specifically what it was.

1           Q:           Let me help you, sir. John Doe 1, could  
2                        you look at the last page, page number 4  
3                        of the document handed to you, tell me  
4                        if you recognize your signature, the  
5                        seal of New World Development  
6                        Corporation. Limited on that page?  
7           A:           Yes, as well as the Chairman didn't even.  
8                        sign it himself.  
9           Q:           Do you accept that you signed this  
10                       document?  
11          A:           Yes, I signed the last page.  
12          Q:           On behalf of New World Development  
13                        Corporation?  
14          A:           As I said, I signed the last page.  
15          Q:           Could I ask that this be entered then as  
16                        LP54?  
17          COMM. BOGLE:   LP54,  
18          MR. GOFF'E:   Being a commitment letter issued by  
19                        Horizon Merchant Bank Limited on 29th of  
20                        July 1994?  
21          A:           Owed \$xx Million, sir.  
22          Q:           And accepted on behalf of New World  
23                        Development Corporation Limited,  
24          A:           Yes.  
25

1 MR. GOFFE: John Doe 1, do you see the interest rate  
2 indicated on page 1 of that document?  
3 A: Yes, 700.  
4 Q: Please speak a little louder?  
5 A: Yes, I see the interest rate entered  
6 here.  
7 Q: And what is the interest rate?  
8 A: x%.  
9 Q: x%. And you see when interest was to  
10 have been paid in that same paragraph?  
11 Do you accept that the interest should  
12 be paid monthly on the last day of each.  
13 month?  
14 A: Mr. Gaffe...  
15 Q: Yes or no sir, please?  
16 A: It wasn't registered because we could  
17 pay...  
18 Q: Do you see, sir, that you agreed to pay  
19 interest monthly on the last day of each  
20 month?  
21 A: That is what it says here, But can I  
22 say something else or you are not  
23 interested?  
24 Q: No, John Doe 1, say it to Miss Clarke,  
25 A: Okay.

1 Q: Do you now accept, sir, that you started out  
2 at x% per annum?

3 A: No, sir.

4 Q: You have any other financing arrangements  
5 with Horizon Merchant Bank which predates  
6 July of 1994?

7 A: Yes, we had a farm and the Chairman was a  
8 friend and my business partner. How much

9 Q: money did you borrow in 1994? I think

10 A: together we borrowed US\$xx for the farm.  
11 Actually let me rephrase then. In relation

12 Q: to development, isn't this the first  
13 financing in relation to development, sir?

14 No.

15 From Horizon Merchant Bank?

16 A: You mean this one?

17 Q: From Horizon Merchant Bank, isn't it

18 A: development that started 1994, wasn't

19 Q: this the first time?

20 From my head I can't say if they were going  
21 simultaneously, but we had a loan, we had a

22 A: farm, a four hundred acre farm and we had  
23 loans for that for the same

24

25



1                    thing because we owned *the farm just for* the  
2                    planting of bananas and the Chairman was a  
3                    partner and a friend then,

4            Q:            I think you are right, John Doe 1. I have  
                         actually found some other financing  
6                    arrangements which I *had* not seen before,  
7                    perhaps you could shed some light on.  
8                    Well,,,

9            A:            I soon come.

10          Q:            I don't think it is necessary, sir. John Doe

11          A:            1, could you turn to page 3, the last page

12          Q:            of that document which was just handed to  
13                    you?

14                    Yes.

15          A:            You recognize your signature there?

16          Q:            Yes. But it is the first time I am

17          A:            actually seeing this, 1997.

18                    I can't believe it is the first time you are

19          Q:            seeing it because you signed it. it is the

20                    first time I am seeing it because this is  
21                    not on my file.

22          A:            Could you explain to us, sir, what this is

23          Q:            about because I really don't know? Well,

24                    since you don't know I don't think

25          A:

1                   it matters what we are dealing with.  
2                   This is not a part of it.  
3           Q:       `hat's fine, Let me ask a question, sir,  
4                   or could I have this entered first  
5                   please as LP55, being a commitment  
6                   letter issued by Horizon Merchant Bank  
7                   Limited to John Doe 1  
8                   December 3, 1997, accepted by him on the  
9                   5th of December 1997 for the sum of \$xx  
10                  Million; Interest at x% per annum.  
11          A:       Well, it could be the share of my part  
12                   of the loan, the \$xx that we  
13                   borrowed to put in the bananas; that  
14                   would be my portion.  
15          Q:       It says here, sir, that you should  
16                   commence payment in 90 days from  
17                   proceeds of loan from NIBJ to Morant  
18                   Farm Limited. Did Morant Farm Limited  
19                   actually obtain this loan from NIBJ?  
20          A:       No.  
21          Q:       How was this commitment being paid then,  
22                   sir?  
23          A:       Well, it wasn't paid. The Chairman was  
24                   in charge of that and so it wasn't paid  
25                   and hence, they took away a commercial

1 building that belonged to my wife.

2 Q: Oh it was the Security to get the

3 repayment of this?

4 A: Yes. J'RB' did that.

5 Q: So this is in addition to the \$xx

6 Million in arrears?

7 A: Yes, and they got the commercial

8 building and a lot that I had in

9 Chancery Hall to do development, they

10 have gone with all of those. I paid

11 heavily *for that*, Mr. Goffe. *You bring*

12 back tears to my heart, sir.

13 Q: John Doe 1...

14 COMM, BOGLE: Just before you go on to something new I

15 think Mr. Ross would like to have some

16 clarification.

17 COMM, ROSS: You mentioned that they charged

18 purchaser's grant ahead of hank's

19 mortgage for construction'?

20 MR. GOFFE: Yes, sir.

21 COMM. ROSS: Look on clause 31(5) which seems to

22 suggest that they ranked *pari passu*, if

23 I am understanding that correctly. It

24 is on page 26.

25 MR. GOFFE: *Pari passu* is proviso. If you look at

1                   the two paragraphs which precede, it  
2                   speaks about ranking pari passu.  
3    COMM. ROSS:       So what does that last paragraph mean?  
4    MR. GOFEE:       It speaks to where the mortgage has  
5                   created in favour of authorized  
6                   financial institution to secure  
7                   repayment from Horizon Merchant Bank to  
8                   the finance construction of building on  
9                   the said land. Now, it would have to  
10                  have been expressly made - the loan  
11                  should have to have been expressly made  
12                  with that purpose in mind before it  
13                  could rank. pari passu. if it was made  
14                  for that purpose in mind, then it would  
15                  rank ahead, the charge would rank ahead  
16                  of this. Now, of course, in the history  
17                  of the this lending what you will see  
18                  that it goes back a very long way and  
19                  not everything would have fallen in this  
20                  proviso, so that I understand the  
21                  argument made before the Supreme Court.  
22                  But that part of it is not necessarily  
23                  relevant to these proceedings. The part  
24                  that is relevant is really whether or  
25                  not there was actually a charge which

1                   was registered at all to rank, and at  
2                   the appropriate time, whether it would  
3                   rank pari passu or in fact...

4    COMM. BOGLE:       At this time therefore we will take our  
5                   usual ten minutes break.

6    MISS CLARKE:       Sorry, may I indicate to counsel while  
7                   the witness is still sworn but I would  
8                   need to perhaps consult with him  
9                   relative to the documents that were put  
10                  in this morning just now that I am  
11                  actually seeing for the first time. So  
12                  I need to take some instructions which  
13                  may or may not inform any re-examination  
14                  that I may have.

15   MR. GOFFE:         I am objecting. In the middle of my  
16                   cross-examination, she can't be having  
17                   any kind of discussion with him.

18   MISS CLARKE:       Perhaps at the end of it, I was thinking  
19                   of saving time, I will ask for some time  
20                   to deal with the documents.

21   COMM. BOGLE:       I will suggest that you do that at the  
22                   end of the cross-examination..

23   MISS CLARKE:       Okay, sir.

24   B R E A K

25   COMM. BOGLE:       Okay, this Enquiry is now reconvened.

1 Mr. Gaffe?

2 MR. GOFFE: Thank you.

3 COMM. BOGLE: John Doe 1, just to remind you that you  
4 are still under oath.

5 A: Yes, sir.

6 MR. GOFFE: John Doe 1, we were talking about  
7 interest rates when we broke and we  
8 looked at the x% in 1994. We have  
9 already looked at interest rate of x%  
10 in 1995. For convenience,  
11 Commissioners, if you look at LP49, the  
12 series of Promissory Notes, it depicts  
13 the picture I am conveying.  
14 Yes, John Doe 1, in 1995 we had a x%  
15 interest rate and then again towards the  
16 end of 1995 it went up to x% and then  
17 in 1997 you saw interest rates of x%,  
18 that was LP55. Now, it seems to me then  
19 that between the period of 1994 to 1997  
20 interest rates started out very high  
21 x%, dipped in 1995 to about 45 to x%,  
22 went back up in 1997 to about x%, you  
23 agree with that?

24 A: I don't know - even if it reached x%

25 Mr. Goffe, you must agree that when JRF

1                   took over I was only owing \$xx Million  
2                   So I must have done well for it to...  
3           Q:           Joe Doe 1, I am not asking how you did  
4                   well.  
5           A:           I don't know what it is.  
6           4:           I am asking you about the interest rate?  
7           A:           I don't know, maybe it was, But I am  
8                   just trying to say I wasn't owing a lot,  
9                   it was only \$xx Million then, So that  
10                   means we were paying.  
11          Q:           It is okay John Doe 1. I want you to  
12                   listen to my questions carefully.  
13          A:           I am hearing your questions, sir.  
14          Q:           Right and answer the questions I am  
15                   asking.  
16          A:           But if I can't I won't.  
17                   That's fine.  
18          A:           Okay.  
19          Q:           John Doe 1, you remember getting this  
20                   letter dated August 3, 1998 from  
21                   Mr. Deryck Rose?  
22          A:           No.  
23          Q:           You don't remember getting it?  
24          A:           No.  
25          Q:           Was that your address, sir, 12 Melmac

1 Avenue, Kingston 5 of August 1998?

2 A: Yes.

3 Q: You know who Mr. Deryck Rose is?

4 A: Yes, I met him and he is very disgusting

5 and I know he worked with FINSAC. I met

6 him socially.

7 Q: Who he worked with?

8 A: FINSAC and JRF.

9 Q: Not with JRF?

10 A: Yes, he worked with JRF in the end; he

11 resigned. He is disgusting.

12 Q: Not in 1998 though, sir.

13 A: I don't know when he resigned.

14 Q: No, he wasn't working with JRF in 1998?

15 A: I can't say, sir.

16 Q: I am suggesting that he wasn't working

17 with JRF.

18 A: Okay.

19 Q: Could I have this marked as LP56, being

20 a letter from Mr. Deryck Rose to

21 John Doe 1.

22 MISS CLARKE: You know, I should indicate to the

23 Commission, honestly I am somewhat

24 ignorant as to how informal these

25 proceedings can be, but the fact that



1 the witness has said he knows the person and  
2 the letter is addressed to him doesn't really  
3 qualify for admissibility you know through  
4 this witness. I believe if this document  
5 ought properly to be admitted, the maker of  
6 it would need to be *here* and hear something  
7 further and more compelling and  
8 admissibility will need to be extracted from  
9 this witness, which I doubt is possible.  
10 Because all we have heard is that he has known  
11 this person who purported to have signed it  
12 and that it is addressed to him at an address  
13 that he identified, but to ask that it be  
14 admitted into evidence is on the basis of  
15 what evidence was just led by counsel, I  
16 believe it is really to ask too much of the  
17 Commission. It would not be founded  
18 evidentially or proper for this document,  
19 based on what has been led, he has not  
20 recognized anything resembling his  
21 signature, he didn't say he received it, he  
22 doesn't seem to know about the letter, I am  
23 not sure  
24  
25 therefore on what basis it can be

1 admitted into evidence through this  
2 witness, Perhaps JRF will prefer to  
3 bring somebody. If it is an official  
4 letter from JRF I think my friend knows  
5 that the actual maker does need to be  
6 here, and if it forms part of JRF's  
7 record, then it can be adduced through a  
8 witness from JRF. But this witness has  
9 not given any evidence to suggest that  
10 it is admissible through him.

11 MR. GOFFE: Commissioner...

12 COMM. BOGLE: One moment. Mr. Gaffe, can you explain  
13 to me first of all what is the  
14 significance of this?

15 MR. GOFFE: The significance of - his actually  
16 receiving it and having knowledge of it  
17 at the time is not really material, the  
18 significance of it is a letter that was  
19 written to him indicating reduction of  
20 his interest rates.

21 COMM. BOGLE: John Doe 1, this letter, did you see  
22 this letter?

23 A; I can't recall seeing it, Commissioner,  
24 But may I just add, sir, I have no  
25 problem with even if it is x%, because

1                   the mere fact that my debt was  
2                   restructured was only \$xx Million. If I  
3                   had allowed to sell the lots in  
4                   Discovery Bay I would not be here today.

5    COMM. BOGLE:   This letter John Doe 1, which is  
6                   addressed to you and signed by Deryck  
7                   Rose saying that your interest rate was  
8                   reduced...

9           A:       I can't recall seeing that letter.

10          Q:       You can't recall?

11          A:       No, sir.

12    COMM. BOGLE:   However, I think that based on the fact  
13                   that we are on interest rates we will  
14                   accept it and when the time comes we  
15                   will decide what use we make of this.

16    MISS CLAHKE:   I would just like for the records for  
17                   you Mr. Chairman to indicate the basis  
18                   on which the letter or the evidence  
19                   based upon which this letter is deemed  
20                   to be acceptable first of all as  
21                   authentic, not so much for its relevance  
22                   in terms of its source, because what we  
23                   have here perhaps is evidence from  
24                   counsel as to the authenticity of this  
25                   letter. Because it may very well be

1                   under *Mr. Deryck Rose* to indicate his  
2                   name, but you know without wanting to be  
3                   mischievous it is not even a letter head  
4                   emanating from any official source, the  
5                   data that is before us. I am sure there  
6                   is not only one Deryck Rose.

7   MR. GOFFE:           I can respond Mr. Commissioner.

8   COMM. BOGLE:         No, I *have made my ruling* on it and we  
9                   will proceed from there.

10   MR. GOFFE:          Thank you Mr. Commissioner.

11                   Do you recall...

12   COMM. ROSS:         Sorry, who is this letter purported to  
13                   have been from, the institution?

14   MR. GOFFE:          Well, it would have been Horizon  
15                   Merchant Bank perhaps at that time after  
16                   it was taken over by FINSAC. And  
17                   John Doe 1 identified Mr. Deryck Rose as  
18                   being associated with FINSAC.

19   MISS CLARKE:        I am just indicating that counsel has  
20                   just said that 'it would have been',

21   COMM. BOGLE:        Yes.

22   MISS CLARKE!        Which is as high as we can take it.

23   COMM. BOGLE:        Yes, because I said we will accept it  
24                   and see what we can make of it.

25   MISS CLARKE:        That is from Counsel.

1 COMM. BOGLE: Yes, Mr. Goffe.

2 MR. GOFFE: John Doe 1, would you agree with me that

3 your interest rate fell to x% in 1998?

4 A: No, sir.

5 Q: Do you remember what your interest rate

6 was in 1998?

7 A: No, sir.

8 Q: So how you know it wasn't 38?

9 A: Well, it maybe nought then because I

10 just don't know. Even now I don't know,

11 sir.

12 Q: The difference then is, are you saying

13 that you don't know or you are saying it

14 was not x%?

15 A: I am saying I don't know, sir.

16 Q: Okay.

17 MISS CLARKE: Sorry, is it going to be marked as LP56?

18 COMM. BOGLE: LP56, yes.

19 MISS CLARKE: Thank you.

20 MR. GOFFE: John Doe 1, I know that you have already

21 said that your complaint here is not

22 interest rate, you said that on several

23 occasions, but I just want to make sure

24 that I understand exactly what you are

25 saying, which is that interest rates did

1 not actually go up on you, in fact, interest  
2 rates went down in relation to your  
3 accounts, is that not correct? I don't know,  
4 A: sir. Can you say what it is now?  
5 I think you know what it is now?  
6 Q: I don't.  
7 A: We have already looked at the restructured  
8 Q: agreement and we looked at what the interest  
9 rates were and we will get to that in due  
10 course. The question I am asking you is that  
11 the period in question, we are talking about  
12 from 1993/1994 until when the loan would have  
13 been taken over and passed to FINSAC. In that  
14 period, would you not agree with me that  
15 interest rates decreased? Increased?  
16 Decreased, went down?  
17 Decreased?  
18 A: Yes.  
19 Q: No.  
20 A: No?  
21 Q: No.  
22 A: Okay, it went higher than x% at any  
23 Q:  
24 A:  
25 Q:

1 time?

2 A Well, the interest and compounded and  
3 penalties...

4 Q No, sir, the interest rates I am  
5 speaking of. Did the interest rate  
6 ever exceed x% per annum, which is what  
7 you signed?

8 A Totally?

9 Q Yes,  
10 A Because the penalties...

11 Q I am not *talking* about penalties now,  
12 sir.

13 A That's a part of it, we have to pay it.

14 Q I am asking you about the rate,  
15 John Doe 1, if the rate ever exceeded x%?

16 A Not to my knowledge. I don't know even  
17 know what it is now. You can educate me  
18 on that.

19 Q Okay. So then it is not *true to say*  
20 *that interest rates rose on you?*

21 A It is true to say it rose on me.

22 Q You remember the interest *rate* JRF was  
23 offering you, was it, not x%?

24 A Thirty percent US and that was high.  
25 In America it was x% then.

1           Q:           John Doe 1, you remember your financial  
2                       position when you applied for your loan  
3                       from Horizon Merchant Bank Limited?  
4           A:           Extremely good.  
5           Q:           Extremely good?  
6           A:           Can I explain?  
7           Q:           No, you don't have to because I think I  
8                       have it here.  
9           A:           Okay.  
10          Q:           Now, I can't make out the date on this  
11                       document, can you identify your  
12                       signature almost close to the bottom of  
13                       the page?  
14          A:           Yes.  
15          Q:           What is it, 1997?  
16          A:           (No answer)  
17          Q:           What you see John Doe 1, 1997?  
18          A:           It would appear like 1977.  
19          Q:           I don't think it was 1977, John Doe 1.  
20          A:           Okay, it could be 1997.  
21          Q:           Could I ask for this to be entered as  
22                       LP57 please being a personal financial  
23                       statement given by John Doe 1 to Horizon  
24                       Merchant Bank Limited some time in 1997.  
25   MISS CLARKE:       Did the witness say that was what it is,



1 is that the evidence?

2 MR. GOFFE: You see it at the top here.

3 John Doe 1, is it correct that in 1997

4 your net worth was \$xx?

5 A: It is on here?

6 If you look at the right hand side of

7 the page where it says net worth in

8 bold, in capital letters.

9 A: Yes.

10 Q: Is that your handwriting where it says

11 \$xx, sir?

12 A: Yes.

13 Q: In 1977, sir?

14

15 Continued...

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