

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 3, 2010

PRESENT WERE:

THE COMMISSION

The Hon. Mr. Justice Boyd Carey (Ret'd) - Chairman

Mr. Charles Ross - Member

Mr. Worrick Bogle - Member

COUNSEL TO THE COMMISSION

Hon. R.N.A. Henriques OJ, QC, LL.M.

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

MARSHALLING THE EVIDENCE

Mrs. Kelley Wong - Attorney - at - Law

REPRESENTING MR. ERROL CAMPBELL

Mr. Lackston Robinson

REPRESENTING BANK OF JAMAICA

Miss Melissa Weston - Attorney-at-Law

REPRESENTING DEBTOR 19

Dr. Christopher Malcolm - Attorney-at-Law

GIVING EVIDENCE

Mr. Errol Campbell - Managing Director

1 **Wednesday, February 3, 2010.**

2 **Commencing at 9:44 a.m.**

3 CHAIRMAN: Good morning, ladies and gentlemen.

4 A: Morning.

5 CHAIRMAN: We are now resumed.

6 Please swear Mr. Campbell. Will you
7 please stand and repeat the oath.

8 (Mr. Campbell sworn)

9 Mr. Campbell, just before Mr. Malcolm
10 begins. Yesterday you were telling us
11 about this 'Window of Opportunity'?

12 A: Yes, sir.

13 CHAIRMAN: Was it advertised?

14 A: I really am not sure, Mr. Chairman, I
15 need to just double check the files to
16 confirm that it was advertised.

17 CHAIRMAN: Okay, so you will try and see whether...

18 A: Certainly, sir. I should be able to get
19 that information early.

20 CHAIRMAN: Very well. You provided us with a list,
21 I don't know what exhibit that is, of
22 the properties that were sold. What
23 exhibit was that, Miss Kelly Wong?

24 MR. HENRIQUES: Exhibit 21A.

25 CHAIRMAN: Exhibit 21A, I understand.

1 A: It's really in relation to question 30.

2 MRS. WONG: Four and six.

3 A: Thirty is the one with the properties,
4 four and six is the shares.

5 CHAIRMAN: Sorry, properties is which one?

6 A: Question 30, a legal page.
7 MR. HENRIQUES: The same exhibit 21A, the last page,
8 Properties by FINSAC and FIS.

9 CHAIRMAN: Is that list an exhaustive list? Does
10 it list all the properties that were
11 sold?

12 A: I am not sure, I expect there are others
13 to be added to it, so in the search that
14 we intend to do in a little while we
15 will endeavour to find any others that
16 were sold and not included here. As was
17 mentioned, in fact the one for DEBTOR 18
18 is not included, so this is one
19 certainly that would be added.

20 CHAIRMAN: And there are others that might well...

21 A: I believe there may well be others,
22 Mr. Chairman, so in the search that we
23 are going to do, when we go through all
24 the files in that process we will expand
25 this list.

1 CHAIRMAN: I see. Very well.

2 DR MALCOLM: Morning.

3 A: Good morning, Dr. Malcolm.

4 Q: Mr. Campbell, just to confirm, yesterday
5 you in fact presented a number of
6 exhibits to the Commission?

7 CHAIRMAN: Just one moment, have you got his name?

8 Q: You presented a number of exhibits to
9 the Commission. Were you yourself
10 responsible for the preparation of the
11 information included in those exhibits?

12 A: Not all of them, Dr. Malcolm.

13 CHAIRMAN: Dr. Malcolm, you appear for whom again?

14 A: DEBTOR 19.

15 CHAIRMAN: DEBTOR 19, thank you very much.
16 There is in particular a FINSAC Loan
17 Recovery Unit, a memo of December 5,
18 2001 to Mr. Patrick Hylton, Managing
19 Director, which was copied to
20 Mrs. Audrey Robinson, then General
21 Manager, Asset Management and
22 Divestment; Miss Diana Davis, a Senior
23 Loan Recovery Manager, and it came from
24 Suzette Campbell who was then Manager,
25 Special Projects?

1 A: Yes, sir.

2 Q: Did you prepare that document?

3 A: No, I did not, Dr. Malcolm.

4 Q: As far as you are aware, is that

5 document accurate?

6 A: As far as I am aware, yes.

7 Q: As far as you are aware it is accurate?

8 A: This is a document that was on the file

9 and I photocopied it and presented it.

10 Q: Very well. Now I want you just to turn,

11 there is a particular page there and it

12 speaks to and mentions the names Paul

13 and DEBTOR 19 SPOUSE, yes? I am sorry

14 about that Commissioners, but there is

15 not a page number on the Exhibit so I

16 can't tell you the actual number.

17 A: Page 5.

18 Q: I am being told it's page 5, and it's

19 towards the bottom of that page, it's at

20 P, if you look at P, you will see it at

21 P.

22 CHAIRMAN: Yes.

23 Q: If you look at, there is a column there

24 saying 'Date of Settlement' which is listed

25 on June 30, '01; do you see that?

- 1 A: Yes, Dr. Malcolm.
- 2 Q: Can you confirm that the balance on
3 account as at that date is nil, as is
4 listed on the sheet?
- 5 A: I am no position to confirm that.
- 6 Q: What is listed on the sheet, we are just
7 asking for your confirmation on that
8 sheet?
- 9 A: Oh, you mean on the sheet?
- 10 Q: Yes.
- 11 A: On the sheet the figure is zero.
- 12 Q: And 'N/A' at the end of that means -- in
13 fact we have a column above it which
14 says 'Value properties/shares to be
15 transferred', not applicable. I take
16 'not applicable' to mean nothing should
17 be have been transferred to JRF?
- 18 A: No, that's not my understanding of what
19 N/A there means. N/A there means there
20 is no property value to be transferred
21 in settlement of the debt.
- 22 Q: Very well. Is that not the same thing?
- 23 A: No, property value is different from a
24 loan balance.
- 25 Q: Very well. But the balance on account

1 is what would be the loan balance, and that
2 is nil?

3 A: Well, it says nil here and I don't know what
4 that means. (Laughter)

5 CHAIRMAN: No, nil means nil, nil can't be two
6 thousand or a billion. It says it.

7 Q: You did confirm that the document -- you
8 did not prepare it?

9 A: I did not prepare it.

10 Q: And you did confirm that as far as you
11 know these documents of FINSAC are
12 accurate?

13 A: I expect that they are, yes.

14 Q: Yes. Otherwise we will be opening an
15 entire can of worms, which I am sure you
16 don't intend to go into.

17 A: (Mr. Campbell smiles)
18 CHAIRMAN: I would smile too.

19 Q: Now, Mr. Campbell, having gotten that
20 little bit of material out of the way,
21 do you in fact know of DEBTOR 19 and DEBTOR
22 19's SPOUSE
23 in a personal capacity?
24 A: I have met them on the last occasion I
was here in December, that would be the

25

first time I was...

1 Q: Have they ever communicated with you to seek
2 information on their loan? Yes, they did.
3 A: And in fact their first communication
4 Q: written to you may have been as far back as
5 June of 2008?
6 Yes.
7 A: Indeed, yes. And by that communication they
8 Q: asked you to provide certain information on
9 their loan, yes? Yes, they did.
10 And you are aware that JRF has been trying
11 A: to exact a significant sum of money from
12 Q: them, close to about \$000000? If you are
13 going to ask me that question, I am not
14 aware of that. But you are aware that JRF
15 A: has been trying to exact money from them?
16 I am aware.
17 Q: You are aware?
18 Yes.
19 A: Have you provided the information that
20 Q: they have sought?
21 A: I believe I have provided some of the
22 Q: information that they have sought.
23
24 A:
25

1 Q: Some of it. Why have you not provided
2 all the information sought?

3 A: The remaining information has to do with
4 information from our database which I
5 was informed by my attorney not to
6 release at this time because they
7 maybe...

8 Q: Let me take you little more closer to
9 it, because I think we are wasting time.

10 A: Did Mrs. Minott--Phillips write to you in
11 or about of November 2008, in fact a
12 letter dated November 14, 2008,
13 instructing you not to release
14 information to the DEBTOR 19?

15 A: Yes, we did get such a letter.

16 Q: Very well. So that is the answer.

17 CHAIRMAN: Have you got a copy of that letter?

18 Q: It was provided, there is in fact a
19 document which was provided, a summary
20 of DEBTOR 19's complaints against JRF
21 and it is included in that document.

22 CHAIRMAN: Oh, I see.

23 Q: Now, Mr. Campbell, you have filed, in
24 fact, based on the proceedings we
25 mentioned in the court, you were joined

1 in those proceedings...

2 CHAIRMAN: I am sorry, that letter is going to be
3 tendered?

4 Q: it has already, indeed -- well, it's
5 part of, as I indicated, a summary of
6 the information which has already been
7 presented to the Commission.
8 Chairman, perhaps there is another way
9 to do it.

10 CHAIRMAN: Yes.

11 DR MALCOLM: There is a summary of DEBTOR 19's
12 complaints as to it's impact.

13 CHAIRMAN: Yes.

14 DR MALCOLM: I would then at this time seek to have
15 that entire bundle tendered into
16 evidence as exhibit, whatever it is
17 called, I am not sure what you want to
18 mention it as.

19 CHAIRMAN: What you call it, DEBTOR 19's submission?

20 DR MALCOLM: Summary of DEBTOR 19's complaints
21 against JRF, but it would include that
22 letter.

23 CHAIRMAN: Exhibit PH1.

24 Q: Very well.

25 CHAIRMAN: We are going to call it 'DEBTOR 19'

1 although it's not particular, at least
2 we can know where it comes from.

3 Q: Very well. Now, in fact, as I indicated
4 in those proceedings involving JRF and
5 the DEBTOR 19, FINSAC has been joined as
6 a party?

7 A: That's correct.

8 Q: And certain information, in fact the
9 information that I mentioned in the
10 letters we sought to get those out of
11 FINSAC, yes?

12 A: Yes.

13 Q: And there is a matter scheduled for
14 continuation on the 15th of March
15 relating to those proceedings?

16 A: That's correct.

17 Q: We have filed an affidavit in which you
18 confirmed that there was a compromise?

19 A: Yes.

20 Q: Yes, you did. And you mentioned there
21 that this had a sixty-day condition
22 attached, yes?

23 A: Yes.

24 Q: Have you verified that any such
25 condition was ever communicated to the

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A:

DEBTOR 19?

I am not in a position to verify that information, Dr. Malcolm. The loan was sold to Jamaican Redevelopment Foundation and the file was subsequently transferred. The source of my information was Board Minutes which was some time round about 2001 where the Board agreed to the compromise. The loan balance principal and interest together were 000000; the Board approved a write-off of 000000, so the DEBTOR 19 were to have paid 000000 and the condition was that they paid it within sixty days. I am not in a position to confirm whether in fact that was communicated to them.

Q:

The question I ask again, and simply yes or no: Have you seen any document, are you aware of any document that confirms that this condition was ever communicated to the DEBTOR 19?

A:

I haven't seen any document to that effect; but I thought it was important that I should mention the source of my

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information.

Q: But you have confirmed and can confirm that there is a document which says that a nil balance should have been transferred?

A: No, I would never say anything like that, Dr. Malcolm.

Q: Are we going to have to go back to this document which you say is supposed to be correct?

CHAIRMAN: Well, I don't think the answer matters because the document speaks for itself.

Q: Very well. Now, we confirm...

CHAIRMAN: Excuse me. Mr. Campbell, let me just say this to you, that this is not a court, maybe -- but you are still under oath.

I understand that, sir.

A: Which obliges you therefore to be candid to this Commission.

CHAIRMAN: I am being candid.

A: I thought I should just tell you that, sir.

CHAIRMAN: I am being candid. The suggestion is being made that a nil balance should

A:

1 have been transferred to JRF, I am saying
2 this document doesn't say that. You mean
3 CHAIRMAN: this list of things showing nil? Nil has
4 another value beside nil, because
5 otherwise that's what we must understand
6 you to be saying.

7 A: There is an exhibit...
8 CHAIRMAN: Maybe there is another way, I don't
9 know.

10 A: There is an Exhibit A that lists the loans
11 that were transferred to Jamaican
12 Redevelopment Foundation as an attachment
13 CHAIRMAN: to the loan sale agreement. That is just a
14 piece of paper with names and list, has no
15 A: particular anything. But this is a piece of
16 CHAIRMAN: paper as well. Because you can't verify it
17 or you can't do anything about it.

18 Q: Let me ask you, Mr. Campbell, since you have
19 mentioned that Exhibit A: Have you been
20 asked to provide a copy of the agreement for
21 sale to Mr. DEBTOR 19, the agreement for sale
22 under which his debt was purportedly
23 transferred?
24 A: I must confess, I really do not recall.

1 Q: Okay, let me ask you another question
2 then: Have you provided a copy of that
3 agreement on or about January, 2002
4 between FINSAC and JRF to this
5 Commission?
6 A: Yes, I have.
7 Q: Have you provided the exhibits to that
8 agreement?
9 A: I have provided a soft copy.
10 Q: So of all the Exhibits, A to H, all of
11 those have been provided to this
12 Commission?
13 A: I don't think all, A to H, are relevant,
14 the ones that I have submitted are
15 Exhibit A, which is the soft copy of the
16 list of loans. I don't remember the
17 other numbers but there is the one that
18 deals with the custody agreement with
19 JRF, and there is one that deals with
20 the loan review agreement with JRF, and
21 there is one that deals with the loan
22 servicing. So the sale agreement plus
23 those three, plus the listing of the...
24 Q: Would you accept, Mr. Campbell, that all
25 the exhibits are not just - some of them

1 are critical parts of that agreement?
2 A: Yes, and the other one, I just recall
3 now, is a copy of the debenture.
4 Q: But you are agreeing that they are all
5 critical parts of the agreement?
6 A: Yes, the other ones really not so
7 important in the scheme of things based
8 on what they are. I mean, one of them,
9 if I may just say, Mr. Chairman, one of
10 them is just a listing of some furniture
11 that was to be sold to JRF. We did not
12 submit a copy of that to the Commission,
13 all the other relevant ones...
14 CHAIRMAN: Well, you see, so far as what is
15 relevant and what is irrelevant can't be
16 dictated by you. You are asked to
17 supply it, your obligation is to supply
18 it; relevance will be determined
19 ultimately by the Commission.
20 A: We will send it to you, Mr. Chairman.
21 CHAIRMAN: Thank you.
22 Q: Okay, so all things, as we know it, an
23 incomplete agreement has been provided
24 to the Commission and you are now
25 undertaking to provide all the other

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exhibits?

2 A:

Sure.

3 Q:

Very well. Now you also mentioned here that
4 -- in fact you had mentioned yesterday that
5 loans were valued by OCWEN, yes?

6

That's correct.

7 A:

Who are OCWEN?

8 Q:

OCWEN is an American consulting firm. What
9 is the business of OCWEN, as far as you know?

10 A:

When we engaged them we were advised that
11 they were loan advisors and we engaged

12 Q:

them in that capacity.

13 A:

Have you ever seen the website of OCWEN? No,
14 I have never been on it.

15 Q:

Would it surprise you if I were to tell you

16 A:

that OCWEN is no more than real estate

17 Q:

valuators and that sort of thing, they have
18 no experience, based on their own website,
19 in the business of loan valuation?

20

That would surprise me, Dr. Malcolm. Well,
21 i would invite you, we are in the information
22 age, to try and see a copy

23 A:

24 Q:

25

1 of their website.

2 A: I will take the advice.

3 Q: I had asked you on the last occasion I
4 was here if there was any connection
5 between JRF/Beat Bank and OCWEN. Have
6 you determined whether there is any
7 connection?

8 A: I have not determined that but in my
9 research of the files I saw the letter
10 signed by OCWEN where they confirmed
11 that none of their officers or staff are
12 involved or connected in anyway with
13 JRF. So I accepted that.

14 Q: Very well. Yesterday you mentioned that due
15 diligence was done on Andrew Beal among
16 others; who is Andrew Beal? He is the head,

17 A: if I may use that word, or the President of
18 the Beal Bank to whom the loans were sold.
19 President is a title. Who is Andrew Beal,

20 Q: who is he as a person?

21 I really don't know that, Dr. Malcolm. Have

22 A: you seen any due deligence as to this

23 Q: gentleman on whom due deligence must have
24 been conducted, or it is said

25

1 the parties don't agree as to
2 interpretation and that is the problem
3 we face at the moment. So that has to
4 be settled either by arbitration or some
5 other means. As a matter of fact, as I
6 understand it now, there are other
7 issues between FINSAC and JRF regarding
8 interpretation of several documents and
9 I think the matters are going to
10 arbitration.

11 CHAIRMAN: I see.

12 DR MALCOLM: Chairman, if I may? There are in fact
13 two provisions...

14 CHAIRMAN: I must observe that- so everybody just
15 hold up their hands and wait, debtors
16 must just suffer in silence or burn
17 tyres -- maybe they want them to burn
18 tyres.

19 DR MALCOLM: In fact, I may point out Chair, that we
20 have ourselves, my client certainly has
21 been awaiting information since 2008 and
22 has been unable and has now had to go to
23 court in attempt to try and procure the
24 information to enable him to determine
25 whether or not he is indebted and to

1 what extent. It is through these
2 proceedings that we are now realizing
3 that there is a nil balance. But I may
4 though, I could indicate, if I may?

5 CHAIRMAN: Yes.

6 DR MALCOLM: If I may indicate though to the Chair,
7 just for completeness, that there are
8 two provisions in the agreement to which
9 my friend speaks, being Clause 5.1.1. I
10 am speaking as to what I see. 5.1.1A
11 which has to do with access to
12 information of assets and I will just go to
13 them in a minute. I will just mention the
14 other one in a minute. There is also 5.2C
15 which also deals with access and information
16 and in 5.1A. if I may read it, it says: "The
17 Seller will give the Purchaser and its
18 respective accountants, counsel,
19 consultants, employees and agents -- and the
20 Seller here being FINSAC, the Purchaser being
21 JRF -- (a) full access, during normal
22 business hours and upon reasonable notice to
23 the Accounting Records and Loan Files, as the
24 Purchaser

1 shall, from time to time reasonably
2 request, and (b) reasonable access to such
3 personnel of the Seller during normal
4 business hours and upon
5 reasonable notice as may be necessary or
6 useful to the Purchaser in its review of the
7 Accounting Records and Loan Files. The
8 Seller will not amend or modify the terms
9 applicable to any Asset or release any
10 Borrower, Security Party or other obligor
11 for any Asset or waive or
12 release any Collateral rights or effect any
13 settlement in regard to any Asset without the
14 prior written consent of the Purchaser." That
15 clause, as I read it, does not preclude the
16 Seller from retaining information or from
17 providing it. There is, as I said, a further
18 clause, 5.2(c) which says Access to
19 Information, and this I interpret in a
20 particular way, but I will read it
21 nevertheless. "After the Closing Date,
22 the Purchaser will give (and will cause each
23 of its Affiliates and its Affiliate's
24 respective accountants,

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counsel, consultants, employees and agents to give) the Seller and its accountants, counsel, consultants, employees, agents and any governmental authority having jurisdiction over the Seller, full access, during normal business hours and upon reasonable notice to all Accounting Records and Loan Files as the Seller shall from time to time reasonably request. In addition, the Purchaser shall permit the Seller to make copies at its own expense of any Accounting Records and Loan Files. In addition, the Purchaser shall permit the Seller and their accountants, counsel, consultants, employees, agents and any governmental authority having jurisdiction over the Seller, reasonable access such personnel of the Purchaser during their normal business hours and upon reasonable notice as may be necessary." I read that in my little mind to mean that any information that the seller may retain of his own must be information which arises after closing,

1 because in my own understanding of loan
2 sales and so on, you cannot really part with
3 information that you must
4 reasonably have, at the very least you must
5 have copies of it. That is my own
6 understanding. But even more
7 importantly, for these purposes, there is in
8 fact provision in the very agreement itself
9 that indicates -- and I am trying to find the
10 particular clause, I know where it is -- but
11 is says governing laws and jurisdiction
12 -Confidentiality. If I may just read the
13 Confidentiality, Section 7. 7(1) "The
14 Purchaser and Servicer undertake to comply
15 with confidentiality requirements of
16 Jamaican law relating to loan transaction."
17 That's the first one 7.1. 7.2. "The Purchaser
18 shall be and is hereby authorized to disclose
19 confidential informing with respect to
20 Assets to Servicer and such of the employees
21 and agents of the Purchaser and Servicer
22 which needs to have access to such
23 information in performance of
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1 their duties. In addition Clause 7.1 does
2 not prevent disclosure which is made for
3 a proper purpose, namely,

4 • to a public authority;
5 • to a court of law in Jamaica or
6 elsewhere otherwise in any legal
7 proceedings;

8 • to the Purchaser's auditors and
9 attorneys-at-law;

10 • to potential purchasers and
11 financiers." And there are certain
12 provisions there.

13 CHAIRMAN: Even if that wasn't there, that is so.

14 Q: Indeed. So it merely, in fact the agreement
15 does no more than encapsulate what would
16 have ordinarily been the case. So as to why
17 the information is

18 not provided I am not sure. But I also
19 thought there is also an agreement, a
20 letter here which is interesting but
21 this is really something not for
22 Mr. Campbell but moreso for JRF.

23 CHAIRMAN: Okay.

24 Q: But Mr. Campbell, it is clear from what
25 you have seen, however, that there are

1 instances of conflict involving some
2 debtors and JRF?

3 A: Yes.

4 Q: Real instances of conflict?

5 A: Yes.

6 Q: And in the scheme of things, your
7 understanding, I hope, is that
8 reasonable work-outs would have been the
9 order of day?

10 A: I would have expect, I can't speak to
11 how they manage their....

12 Q: You can't speak to how JRF managed and I
13 understand that. But your anticipation
14 as seller would have been that peoples'
15 right would have been respected?

16 A: Yes, certainly.

17 Q: And arrangements entered with FINSAC
18 would have been upheld?

19 Q: Absolutely.

20 DR MALCOLM: Indeed. I have no further questions for
21 you.

22 CHAIRMAN: Yes, Mr. Robinson.

23 MR. ROBINSON: Just want to clarify certain things with
24 Mr. Campbell. Mr. Campbell, are you
25 averse to providing information to

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debtors?

2 A:

No, I am not, Mr. Robinson.

3 Q:

Is it a fact that in relation to the DEBTOR
19, that Dr. Malcolm approached you with
a view to getting information regarding
the DEBTOR 19?

7 A:

Yes, he did.

8 Q:

And isn't it a fact that you in fact
disclosed certain information to him?

10 A:

Yes, I did.

11 Q:

Yes. And that it is as a result of your
disclosing that information to
Dr. Malcolm that counsel for JRF took
objection to what you did?

15 A:

That's correct.

16 Q:

And that it was consequent, as a matter of
fact, what you showed Dr. Malcolm was
information on your, what is it, a soft copy?

19

A soft copy, it's on the computer, yes. And
he wanted the hard copy?

21 Q:

That's right.

22 A:

But it was as a result of objection from
counsel for JRF that you were prevented from
providing the hard copy, is that

25

1 so?

2 A: That's correct.

3 Q: Yes. And you did so after there was

4 intervention by your attorneys?

5 A: That's correct.

6 Q: So in fact you are always willing to

7 provide information to debtors?

8 A: Absolutely.

9 Q: And you don't have any intention of

10 hiding anything?

11 A: Nothing at all, as long we have

12 information I am prepared to provide it.

13 MR. ROBINSON: Thank you, very much.

14 CHAIRMAN: We have, Mr. Levy is supposed to be --

15 is there anybody else, no counsel, she

16 is not interested. We have a problem.

17 Mr. Levy is the counsel who should be

18 here, I understand he is in Court

19 somewhere. I don't know what is the

20 latest intelligence against from him.

21 DEBTOR 20: He is on his way, I just spoke to him,

22 he is on his way.

23 CHAIRMAN: Well, the logical thing then is to take

24 an adjournment, short adjournment, we

25 adjourn to await the arrival of

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Mr. Levy. So we will rise. 2

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SHORT BREAK TAKEN

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1 ON RESUMPTION

2 CHAIRMAN: We are now resumed.

3 Mr. Campbell, you are still under oath.

4 A Yes, sir.

5 CHAIRMAN: Mr. Levy?

6 MR. LEVY: Mr. Campbell.

7 A Morning, Mr. Levy.

8 MR. ROBINSON: May it please you, Mr. Chairman, on the

9 last occasion Mr. Campbell was here

10 Mr. Levy sought certain information

11 regarding DEBTOR 18 and I think

12 the questions were whether the

13 properties were valued prior to sale?

14 MR. LEVY: Repeat that?

15 MR. ROBINSON: Whether the properties were valued prior

16 to sale?

17 MR. LEVY: That is one.

18 MR. ROBINSON: And whether notice was given in light of

19 Registration of Titles Act.

20 MR. LEVY: Yes.

21 MR. ROBINSON: And the other one was whether the

22 property was advertised for sale.

23 MR. LEVY: Yes.

24 MR. ROBINSON: Mr. Chairman, that information is

25 contained in a file. There are three

1 suits, one is in the Attorney General's
2 Chambers at the moment; one is being
3 handled by JRF because there is a file
4 that was transferred to JRF, there is a
5 related suit and it is being handled by
6 their attorneys-at-law; and there is
7 another DEBTOR 18 suit that is
8 being handled by counsel at the private
9 Bar. But the answers to these questions
10 are contained in the file which is in
11 possession of JRF. We have approached
12 them for -- at least Mr. Campbell went
13 and he was asked to put it in writing;
14 he has done so and the response is that
15 they will get the advice of their
16 attorneys-at-law before they respond.

17 CHAIRMAN:

How long ago was this?

18 MR. ROBINSON:

Well, he went some time I think in the

19 third week in January I think, because
20 he was searching for information but
21 then he recognized that there were
22 really three suite and that this one was
23 with JRF. So consequent on that he went
24 there, the letter was sent on the 29th
25 of January when he wrote, because he

1 went before, they asked him to put it in
2 writing the letter was written on 29th of
3 January.

4 CHAIRMAN: Is there anything to preclude us from
5 issuing a subpoena for JRF to produce the
6 file?

7 MR. ROBINSON: That is in your discretion, sir; I would not
9 want to comment on that. Not that they are

10 CHAIRMAN: saying that they won't... I thought you
11 would join us in getting it.

12 MR. ROBINSON: Not that they are saying that they won't
13 provide the information.

14 CHAIRMAN: They are not saying anything.

15 MR. ROBINSON: But they say that, let us have it and we will
16 send it to our attorneys, so we are waiting
17 on a response.

18 CHAIRMAN: Well, maybe you have the patience of Job,
19 but not everybody is like Job, so how long
20 shall we wait?

21 MR. LEVY: I just wonder, Mr. Chairman, if this is an
22 attempt by JRF to conceal information from
23 this Commission?

24 CHAIRMAN: Pardon?

25 MR. LEVY: If this is *the* beginning of a further

1 attempt by JRF to conceal information
2 from the Commission.

3 CHAIRMAN: Well, we don't know; you will see.

4 MR. LEVY: Mr. Chairman, with due respect, I would
5 like to ask Mr. Campbell a question.

6 CHAIRMAN: Yes.

7 MR. LEVY: Mr. Campbell, you stated yesterday that
8 firstly, the practise of FINSAC was
9 firstly to offer for sale properties
10 which they were selling by public
11 auction?

12 A That is correct.

13 Q The record shows, Mr. Campbell, that you
14 were a director of REFIN Trust in
15 June 2002?

16 A Maybe in May, but yes.

17 Q As a director are you personally aware
18 whether the DEBTOR 18 properties
19 were offered for sale at public auction
20 before they were sold at private treaty?

21 A I understand that it was the assets of
22 DEBTOR 18 that were being
23 advertised for sale and the assets were
24 advertised.

25 Q The law requires you to advertise the

1 real estate, not the assets, not the
2 business of the company. Before the
3 Power of Sale can arise you must offer
4 the assets, the registered property, the
5 real estate to the public, and you must
6 also give a notice. Now as a director
7 of REFIN at that time to your personal
8 knowledge was that carried out?

9 A The property for DEBTOR 18 was
10 sold prior to my becoming a director of
11 REFIN, so I do not know, Mr. Levy.

12 Q The record shows, Mr. Campbell, that you
13 became a director of REFIN in May 2002;
14 the transfer of the properties took
15 place -- but you were also a senior
16 employee at the time -- the transfer of
17 the real estate took place in June 2002,
18 at the time when you were director.

19 A The sale would have been done months
20 earlier though.

21 Q The directors would have had to approve
22 the use of the seal of the transfer.
23 Were you at that meeting when that was
24 done?

25 A No, sir.

1 Q Who would have been at that meeting, who
2 is going to come before the Commission,
3 will Mr. Hylton be there? He signed the
4 transfer.

5 A Well, I wasn't at the meeting so I am
6 really not sure.

7 Q So you don't know whether in fact this
8 was treated differently from the other
9 properties which FINSAC, and by FINSAC I
10 mean FINSAC and its subsidiaries, sold
11 to creditors -- belonging to creditors?

12 A I do not know that, sir.

13 Q And you don't know whether the statutory
14 notice was given?

15 A I don't know that either. I saw, when I
16 was looking through the files, that it
17 was the assets that were sold and not
18 just a real estate, so the BSA was
19 included in that sale, so I don't know,
20 and the property, and it was the
21 assets that were sold by the Receiver
22 and not just the property.

23 Q The law requires a mortgagee to give
24 notice and to take certain procedures
25 before the transfer, the real estate

1 mortgage transfer, and you are not aware
2 that any of these procedures were
3 carried out?

4 A I wasn't in the directorship at the
5 time, I really don't know.

6 Q And the records you have do not you show
7 this?

8 A I haven't looked at all the records, I
9 have suggested that some of the files,
10 as Mr. Robinson mentioned earlier, are
11 with JRF. We need to review those to
12 see if we can get the information to
13 present those to you, Mr. Levy.

14 Q And you have no right to get this
15 information from JRF -- 'right'?

16 A The...

17 Q As a director of company you ought to
18 know whether they have a right?

19 CHAIRMAN: Mr. Levy, there is no need to quarrel;
20 ask the question, please.

21 A The agreement suggests that FINSAC
22 should be able to get the information,
23 yes.

24 MR. LEVY: Agreement suggests that FINSAC has a
25 right to get the information. That is

1 the question.

2 A Yes.

3 Q And you are saying yes?

4 A Yes, sir.

5 Q I just want the record to show this.

6 Mr. Campbell, when will you undertake to

7 get that information? We are not in the

8 concealment business which obviously

9 from what was read a while ago, JRF is

10 in; we are not in that business.

11 A I can't...

12 MR. ROBINSON: With due respect, Mr. Chairman, I have

13 indicated you know, to my friend, that

14 the letter was written and the

15 information was sought, so I don't know.

16 CHAIRMAN: Well, he is getting the evidence from

17 him rather than from you, because we

18 need to have the evidence.

19 MR. ROBINSON: That is the question, if he wants to ask

20 him whether he has written a letter, ask

21 him here.

22 MR. LEVY: I don't know anything about any letter;

23 I haven't read any letter, I hear you

24 referring to a letter and talking about

25 a letter, I don't know what the letter

1 brokers that sell it.

2 Q That is the second step. First you said
3 you test the market with sale at
4 public auction procedure and then
5 subsequently you said it sold by private
6 treaty when you fail to reach the
7 reserve price at auction. That is what
8 I understood your evidence yesterday to
9 be.

10 A If you wish I could repeat it. We send
11 the property information to an
12 auctioneer for them to sell at auction
13 first and if the reserve price is not
14 reached then we send it brokers for them
15 to sell by private treaty.

16 Q That is the question I was asking.

17 CHAIRMAN: Yes.

18 A No, the question that you asked me was
19 whether it was the practice of FINSAC
20 to advertise properties for sale and I
21 am saying it is not FINSAC that does
22 it.

23 MR. LEVY: Let me rephrase it more clearly than you
24 have it.

25 A No, I just want to make sure we get the

1 record clear, Mr. Levy.

2 Q Was it the practice of FINSAC before
3 selling real estate which was mortgaged
4 to the failed financial institutions to
5 offer these properties for sale by
6 public auction before offering them by
7 private treaty?

8 A Yes.

9 Q Was this practice always carried out?

10 A As far as I am aware, yes.

11 Q So if it was not carried out in the case
12 of DEBTOR 18, this was a deviation
13 from policy?

14 CHAIRMAN: Logic dictates that.

15 A Like I said in relation to DEBTOR 18
16 it was the assets that were
17 sold and the assets were advertised for
18 sale, it is just that assets include the
19 property.

20 Q You sold the real estate. There are
21 legal requirements when there is a
22 mortgage to be carried out before you
23 have the right to sell the real estate,
24 the Power of Sales does not arise unless
25 you do certain things prescribed by the

1 law which you read to the Commission --
2 which I gave you and you read to the
3 Commission. There is a legal
4 procedure, we are not really dealing
5 with other assets, that is different
6 law. The Registration of Titles Act,
7 that is the one we are talking about.
8 The Secretary couldn't record the blink
9 of the eye, Mr. Campbell.

10 CHAIRMAN: No, the cameras did.

11 MR. LEVY: Mr. Campbell, I am asking a question.

12 A I didn't hear a question; you were
13 making a statement in relation to the
14 requirements of the Registration of
15 Titles Act.

16 Q The question is, if REFIN Trust sold
17 from the real estate mortgage to NCB
18 under Powers of Sale contained in a
19 mortgage without having given a notice,
20 would that in your view, notice under
21 the Registration of Titles Act making
22 demand, would that in your view give
23 them the right to transfer the
24 properties?

25 A Real estate for DEBTOR 18 were

1

sold by the receiver, Mr. Levy.

2

Q

The transfer was done my REFIN Trust. I am not dealing with the Receiver, the Receiver is not here yet, I hope the Commission will call him, THE RECEIVER, but he is not here yet; we are not dealing with that. What is before us this morning is the fact that REFIN

3

4

5

6

7

8

9

Trust transferred the two factories of

10

DEBTOR 18 Jamaica Limited to a

11

connected party without having the right

12

at all to make that transfer. That is

13

the question before us?

14

A

That sounds like it is a legal matter

15

though, I don't know that we can

16

determine that here, Mr. Levy, because

17

you are saying they transferred it

18

without legal right.

19

Q

Mr. Campbell, you are an intelligent

20

man, you are an educated man. You read

21

the Registration of Titles Act which

22

very clearly said -- would you like me

23

to show it to you again?

24

A

You don't need to show it to me again.

25

Q

It very clearly says that the Power of

1 Sale arises if the mortgagor fails to
2 provide a demand which has to remain
3 under the Act within the time prescribed
4 by the Act or set out in the mortgage,
5 you read that?

6 A Yes.

7 Q I don't think you have forgotten that. I
8 am asking, if there was no demand did
9 the Power of Sale arise? That is a
10 question.

11 A I do not know whether a demand was made,
12 Mr. Levy, I am to review the files and I
13 will present the information to the
14 Commission.

15 Q And you undertake to do that,
16 Mr. Campbell, and return to us?

17 A Yes, sir.

18 Q I leave it to you Mr. Chairman as to the
19 time.

20 CHAIRMAN: Mr. Campbell is here for just three
21 days.

22 MR. LEVY: Does JRF have these files in Jamaica, in
23 Kingston, Corporate Area, to your
24 knowledge?

25 A To my knowledge, yes.

1 required to do, as I said yesterday
2 morning we got about 90%, there are a
3 few things we didn't have. Other things
4 arose yesterday and we said we would
5 look for those documents too and provide
6 the information. Surely that can't be
7 done in a day.

8 CHAIRMAN: You said 'surely', I don't know why.

9 MR. ROBINSON: Because of what is required, he has to
10 search several files especially in
11 relation to the properties.

12 A Properties and the Minutes for the
13 forgiveness.

14 MR. ROBINSON: It is going to take some time, but we
15 are available at any time as soon as we
16 get the information we will pass it to
17 you.

18 CHAIRMAN: We are available all the time and we
19 want it now, not next year,
20 unfortunately.

21 MR. LEVY: Mr. Chairman, I would just like to ask
22 Mr. Campbell a few questions.

23 CHAIRMAN: We are still sitting.

24 MR. LEVY: Mr. Campbell, do you have access to the
25 Minutes of the directors of FINSAC and

1 REFIN Trust, I don't think those would
2 have been transferred to JRF?
3 A I have access to those Minutes of FINSAC
4 and FTS.
5 Q You have access?
6 A And I have provided copies to the
7 Commission, yes.
8 Q I would like to ask you a few questions
9 and you can go and find out from the
10 Minutes in your office. Can you
11 produce to the Commission copies of the
12 relevant part of the Minutes that deal
13 with the sale of the DEBTOR 18
14 property of both REFIN and FINSAC?
15 A Sure.
16 Q That shouldn't be a problem and that
17 would be available tomorrow?
18 A I will try and locate that, yes.
19 Q I know he has a lot of trying to do, I
20 hope he doesn't have to get tried at
21 some stage.
22 CHAIRMAN: We will get a diskette.
23 A I will send it up later. I have asked
24 somebody to make copies of it when I
25 was leaving.

1 CHAIRMAN: I am trying to itemise what it is we have
2 to...

3 A I will put it on a CD because diskette
4 probably is .

5 COMM BOGIE: CD is fine.

6 CHAIRMAN: So we will adjourn until tomorrow
7 morning at 9:30. Thank you very much.
8 Mr. Campbell, look forward to your
9 sterling effort in searching.

10 MR. ROBINSON: Is Mr. Campbell required to return
11 tomorrow, Mr. Chairman?

12 CHAIRMAN: Yes, he is here for three days.

13 MR. ROBINSON: For the purpose of?

14 CHAIRMAN: Whatever he finds and brings. We haven't
15 asked him the questions we want to ask
16 him yet.

17 A I thought you would give me a little
18 time to go find the information,
19 Mr. Chairman.

20 CHAIRMAN: You have all day now; the day is not yet
21 spent.

22 ADJOURNMENT TAKEN

23
24
25