

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
TUESDAY, February 9, 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

Mr. Ransford Braham - Attorney-at-law

Mrs. Kelley Wong - Attorney-at-law

REPRESENTING JAMAICA REDEVELOPMENT FOUNDATION

Mr. Conrad George - Attorney-at-law

Mr. Gavin Goffe - Attorney-at-law

REPRESENTING FINSAC

Mr. Lackston Robinson - Attorney-at-law

REPRESENTING DEBTOR 18 JAMAICA LTD

Mr. Anthony Levy - Attorney-at-law

GIVING EVIDENCE

Mr. Robert Martin - Chairman of FINSAC

Janet Farrow - CEO Jamaica Redevelopment Foundation Inc.

1 Tuesday, February 9, 2010.

2 ON RESUMPTION AT 9:40 A.M.

3 MR. GEORGE: My name is Conrad George, I am
4 instructed by Hart, Muirhead, Fatta and
5 I represent Miss Farrow and Jamaican
6 Redevelopment Foundation. Sir, Miss
7 Farrow is here in compliance with the
8 summons. There are some difficulties
9 though which I would like to draw your
10 attention to.

11 CHAIRMAN: You have to hold the mike Mr. George.

12 MR. GEORGE: Very well, sir. The first point which I
13 wish to take you to sir, is that the
14 subject of the summons is that Miss
15 Farrow should bring certain documents to
16 show you and to give evidence. In effect
17 sir, this is an application as I
18 understand it by
19 Mr. Levy for disclosure of documents as I
20 understand the summons was prompted by a
21 request made by Mr. Levy. In this regard sir,
22 I would ask you **to** take account of the fact
23 that there are a number of proceedings
24 involving Mr. Levy's complaints in which

25

1 application for disclosure of the said,
2 same documents has been made though the
3 application for disclosure have not yet
4 been concluded they have been contested
5 and in my submission they are therefore
6 sub judice

7 CHAIRMAN: The fact that they are sub judice it
8 doesn't affect this Commission. The
9 Commission of Enquiry is not found by
10 those proceedings. Miss Farrow is
11 obliged to produce the documents because
12 they are required in this enquiry. The
13 Enquiry is ordered by the Governor
14 General under the Commission of Enquiry
15 Act and you will see that she is obliged
16 to produce it, so all that we require is
17 she producing it, is she producing it
18 yes or no? If she is not what is the
19 ground and the ground I am suggesting to
20 you is not that there is another
21 proceeding elsewhere.

22 MR. GEORGE: If I might go on.

23 CHAIRMAN: You must bear in mind, Mr. George, this
24 is not a court so...

25 Q I do appreciate everything you say sir,

1 I respectfully agree with everything you
2 say. Nevertheless I believe **a**
3 distinction ought to be drawn between
4 production of documents and disclosure
5 of those documents of the legal party
6 and that is where I wish to make
7 submissions to you that Miss Farrow is
8 here to comply with the subpoena. She
9 has certain documents with her and she
10 will comply by disclosing those to the
11 Commission. The difficulty, sir, is the
12 impression which I may be wrong is that
13 those documents are sought by Mr. Levy
14 and my client's concern is that
15 effectively he is attempting to use the
16 vehicle of this Commission to obtain
17 disclosure for use in proceedings in
18 court?

19 CHAIRMAN: Could he?

20 MR. GEORGE: My submission no, sir, that the
21 documents that you have subpoenaed ought
22 to be used only by the Commission and
23 ought not to be given to any third party
24 and that is in fact the purpose of my
25 submission to you.

1 CHAIRMAN: Yes, thank you.

2 MR. GEORGE: There are some practical difficulties
3 with compliance with the summons, the
4 summons refers to all notes and that is
5 the demand made or driven by REFIN Trust
6 Limited, DEBTOR 18 Jamaica Limited
7 et cetera, et cetera. Sir, the
8 difficulty that Miss Farrow has and she
9 has searched all the files in her
10 possession, the difficulty Miss Farrow
11 has is she never received the
12 receivership files which were held by
13 the previous receiver. There are therefore
some gaps in what she has. Mr. Douglas Chambers was the Receiver before
14 and declined to transfer or pass over the
15 files to Mr. Ken Tomlinson who was appointed
16 Receiver to take his place in fact that is one
17 of the hotly contested pieces of litigation
18 before the court at the moment and therefore
19 sir, her files are not completed and she will
20 explain to you all of the aspects of the
21 difficulty that she faces in that regard.
22
23
24
25

1 CHAIRMAN: Yes. Well, what we can do °-- FINSAC
2 told us, when I say FINSAC I in
3 referring to the gentleman who gave
4 evidence, testified that all these
5 documents handed over to JRF that is the
6 evidence we have, so what **Miss** Farrow is
7 required to do is to put up what she
8 has.

9 MR. GEORGE: Sir, she is here.

10 CHAIRMAN: So can she produce them? Can you swear
11 her please? So that there can be doubt
12 why we want the documents is because of
13 what FINSAC told us.
14 Witness sworn.

15 MR. BRAHAM: Could you state your full name ma'am.

16 A Janet Farrow,

17 Q And are you in anyway connected to
18 Jamaican Redevelopment Foundation?

19 A I am the Chief Executive Officer of the
20 Jamaican branch here in Jamaica.

21 Q And you have been Chief Executive
22 officer since when?

23 A 2005.

24 Q Did you receive from this Commission two
25 witness summons both of them dated the

1 4th of February, 2010? Do you recall
2 receiving either or both of those
3 documents?

4 A I received one document.

5 Q I see. Well, did you receive a document
6 as I said dated 4th of February, 2010
7 requiring you to come before the
8 Commission to give evidence and to bring
9 with you all notes and letters of
10 demands made or given by REFIN Trust to
11 DEBTOR 18 Jamaica Limited prior to
12 the sale and transfer by REFIN Trust
13 Limited of the properties Registered at
14 Volume 1191 Folio 165 and Volume 1178
15 Folio 870 of the Registered Book of
16 Titles and copies of all advertisements
17 published by REFIN Trust Limited
18 offering for sale and selling the said
19 properties by private treaty or by
20 public auction prior to July 2002.
21 Secondly, copies of all valuation and
22 appraisals obtained by REFIN Trust prior
23 to REFIN Trust Limited offering for sale
24 and selling the said lands Registered
25 Volume 0000 Folio 000 and Volume 0000

1 Folio 000 of the Registered Book of
2 Titles transferring sale in July 2002,
3 did you receive that one?

4 A Yes, I did.

5 Q Very well. So maybe we should start
6 with that one. Do you have any
7 documents in relation to the matters
8 raised in this witness summons?

9 A We reviewed the files that are in our
10 possession and none of those documents
11 are in the files. It is -- *what is in*
12 *the file* if you would like me to explain
13 to you what we found.

14 MR. BRAHAM: Well just respond to counsel. You found
15 no documents relating to the matters I
16 just enumerated?

17 A REFIN Trust did not sell the asset of
18 DEBTOR 18.

19 MR. GEORGE: If I might assist, the witness did make
20 a full search and she advised us that
21 there are practical difficulties with
22 the summons, the summons may be seeking
23 documents that may *not* exist. What I
24 think she was about to explain to the
25 Commissioners was the nature of the

1 events that would lead her to come to
2 that conclusion.

3 CHAIRMAN: Thank you.

4 MR. BRAHAM: Now you were saying...

5 CHAIRMAN: What we need to know is, have you got
6 that document?

No.

7 A

Move to the next question.

8 CHAIRMAN:

Chairman, you said move to the next ---- I

9 MR. BRAHAM:

10 didn't hear you.

11 COMM ROSS:

Question.

12 MR. BRAHAM:

You were about explaining what you have
13 on the file and why it is that you don't
14 have those documents, I think the
15 Commission would...

16 A

First of all this transaction was before
17 JRF was here so we are relying on what
18 is in the files, but there is a demand
19 letter from 1998 from RECON Trust not
20 REFIN Trust and NCB to DEBTOR 18
21 and to DEBTOR 18B which I have brought for
22 you. The sale of the DEBTOR 18
23 assets we found a notice to complete
24 making time of the essence which
25 references the sale agreement between

1 DEBTOR 18 Jamaica Limited and Receivership,
2 DEBTOR 18B Limited in Receivership,
3 Caribbean Tooling Limited, DEBTOR 18,
4 (Jamaica) Acquisition 1998 Limited who are
5 the vendors and THE RECEIVER and NIBJ. So
6 REFIN Trust is not listed as a party to that
7 sale agreement and so we were assuming that
8 REFIN Trust did not sell
9 10 the assets,
11 therefore there wouldn't be
12 any notices of sale by REFIN Trust they
13 would be from the Receiver, it was the
14 Receiver who were selling the properties
15 so most of the information about the
16 sale would probably be within the
17 Receiver's files which we do not have
18 possession of.

18 Q The documents you have in hand now do
19 you have copies for the Commission?

20 A Yes, yes, we also found...

21 CHAIRMAN: Just one moment. Let's have what she
22 has.

23 MR. BRAHAM: The witness summons of course referred
24 to REFIN.

25 CHAIRMAN: Who is the Receiver she is talking

1 about?

2 MR. BRAHAM: The Receiver?
3 A The Receiver at that time would be
4 THE RECEIVER.

5 Q And you mentioned some other companies,
6 Acquisition Limited.

7 A I believe that was before my time but I
8 believe Acquisition Limit was „xa
9 hired-down company that was created as
10 part of the Receivership.

11 Q I see. Now, if I may just go through
12 the documents that you have -- copies
13 that you have produced and this is a
14 notice to complete and making time of
15 the essence which is addressed to
16 THE RECEIVER and signed by an
17 attorney-at-law, Marva Gordon Simmonds,
18 is that one of the documents?

19 A Correct.

20 Q Do we formally take them into evidence
21 sir?

22 CHAIRMAN: That is JF1?

23 MR. BRAHAM: And this is dated the 9th of January,
24 JF1 the 9th of January 2002?

25 MR. GEORGE: This is the document signed on behalf of

1 NIBJ?

2 MR. BRAHAM: No, sir.

3 MR. GEORGE: I, Marva Gordon Simmonds, Legal Officer
4 of the National Investment Bank of
5 Jamaica Limited.

6 MR. BRAHAM: Yes, it does say that.

7 CHAIRMAN: That is the one.

8 MR. GRAHAM: Yes, JF1. The other documents, ma'am,
9 is that a letter from the
10 attorney-at-law Miss Shirley-Ann Eaton
11 addressed to DEBTOR 18 Limited
12 dated 9th of March 1998, is that one of
13 the documents?

14 A Correct.

15 Q And in this document Miss Eaton is
16 purported to act for RECON Trust?

17 A Correct and NCB.

18 Q Yes, would we admit that sir as JE'2.

19 CHAIRMAN: Yes.

20 MR. BRAHAM: The other letter ma'am is dated the 9th of
March 1998 signed and coming from Miss Shirley-Ann Eaton addressed to
21 DEBTOR 18B Limited and of course signed by
22 her and in it she demonstrates that she
23 25 acts on behalf of
24 RECON Trust and

1 National Commercial Bank?

2 A Correct.

3 Q And MSB Limited?

4 A Correct.

5 Q Well, this would then be JF3? Is that
6 all the documents that you have in
7 relation to the matters raised?

8 A We found a document that is titled DEBTOR
9 18 Jamaica Limited in Receivership sales
10 proceeds and analysis for the period July 10,
11 2001 to February 28, 2002 this was prepared
12 by Mr. Downer that shows that the sale
13 proceeds received for the sale of the assets
14 was \$150M Jamaican Dollars.

15 Q Do you have any
16 other documents?

17 A The only other documents we found were
18 various legal documents where claims
19 have been filed in the court relative to
20 this dispute.

21 Q Can I have a look at them please? The
22 document that you just referred to
23 DEBTOR 18 Jamaica Limited in
24 Receivership sale proceeds analysis for
25 the period 10th July 2002 to 28th

1 February 2008. Is it an unsigned
2 document, isn't that it?

3 A Correct.

4 Q Do you know if it is a part of a larger
5 document?

6 A We couldn't tell the files are not
7 particularly in good shape.

8 Q Sir, I am going to ask that the document
9 be admitted as JF4. Now, you have also
10 produced some court papers, these court
11 papers are in relation to the sale of
12 this property?

13 A Correct.

14 Q Now, first paper that I am going to
15 refer to is a claim number 2004 HCV 0486 and
it is headed Amended Claim Form and in that claim the parties are DEBTOR
16 18 Jamaica Limited (In Receivership) 1st
17 Claimaint, DEBTOR 18B Limited, the 2nd
18 Claimant and the
19 21 defendants
20 include the National
22 Commercial Bank, RECON Trust and Richard
23 Downer?

24 A Right.

25 Q And I think that it is dated the 6th of

1 April 2004, may that be admitted as JF7?

2 CHAIRMAN: 5.

3 Q Documents, ma'am, is a Further Amended
4 Particulars Of Claim in claim 2004 HCV
5 0486 the parties claimants are
6 DEBTOR 18 Jamaica Limited in
7 receivership DEBTOR 18B Limited?

8 CHAIRMAN: It's the same suit?

9 MR. BRAHAM: The same suit and same parties and this
10 is one of the documents that you have
11 produced?

12 A Correct.

13 Q May that be admitted as well sir as JF6?
14 You have also produced two copy titles
15 Volume 0000 Folio 000. Is that one of
16 the documents, copy documents you
17 produced, ma'am?

18 A Yes, sir.

19 Q May that be admitted too, sir as JF7?
20 For the document produced is another
21 copy title in Volume 0000 Folio 000 and
22 that too is a document you produced?

23 A Correct.

24 Q This is Folio JF8.

25 Q Now, are there any other document that

1 you have in relation to that property
2 the property that we just discussed, the
3 the two properties?

4 A We found no valuation or demand letters
5 or advertisements that were requested.

6 Q I see. Did you receive a subpoena now
7 in relation to -- well sir, that appears
8 to be Miss Farrow's response to the
9 request for the documents, sir.

10 CHAIRMAN: Well, she is here to produce documents
11 that is what she is here to do and she
12 has produced what she has. We will have
13 to take time to consider these documents
14 to see what they adduced. Miss Farrow,
15 thank you for coming.

16 A Thank you, sir.

17 CHAIRMAN: Well, she has done what she has come
18 here to do.

19 MR. GEORGE: I am obliged. ;:

20 CHAIRMAN: Thank you.

21 MR. BRAHAM: The other witness this morning is
22 Mr. Martin from FINSAC, the chairman of
23 FINSAC, sir, and I believe that he is
24 present.

25 CHAIRMAN: Is he ready?

1 MR. BRAHAM: Well Mr. Lackston Robinson who
2 represents him will address you if he is
3 not ready.

4 MR. ROBINSON: May it please you, Mr. Chairman,
5 Mr. Robert Martin is present in answer
6 to summon issued. Mr. Martin is not
7 ready to give evidence this morning sir,
8 because he had not been presented with
9 any questions as to what he is required
10 to research and to assist you this morning.
11 I think Mr. Martin will need to, need some
12 time where he could be given an opportunity
13 to prepare himself with a view to assisting
14 you.

15 CHAIRMAN: Well, we have no
16 problem with giving Mr. Martin time because let me say we laid hands
17 suddenly on him, but we trust that his counsel
18 -- I think you will advise him why it is we
19 need his presence. We are concerned with his
20 company hijacking REFIN so that is what we
21 need him to come and address especially, but
22 maybe other matters so we will give him time
23 to advise himself. Actually there is no other
24 witnesses.

25

1 MR. BRAHAM: No, sir.

2 ~~CA~~ In the circumstances... 3 ~~MA~~ Mr.
Chairman, there are other matter

4 you will recall that Mr. Campbell about
5 another issue by the FINSAC Board and we
6 are talking about issues that took place
7 also in time when Mr. Martin was
8 Chairman of the Board and maybe he could
9 help us to give us some information on
10 that.

11 CHAIRMAN: If you have apprised Mr. Robinson of
12 that aspect maybe he could assist us.
13 Of the fact that you just stated.

14 MR. LEVY: He is here. I will be happy to do so.

15 CHAIRMAN: Thank you. We don't want there to be
16 any mistake.

17 MR. ROBINSON: Mr. Chairman, I don't know that
18 Mr. Campbell was scheduled to return
19 this morning. Well, he is here³⁴. He was
20 not schedule to be here this morning but
21 apparently he came because Mr. Robert Martin
22 is here.

23 CHAIRMAN: Mr. Campbell, has he brought all the
24 various things that he was asked to
25 produce?

1 MR. ROBINSON: If I remember correctly he was asked to
2 do further research and return but not
3 this morning.

4 CHAIRMAN: That is not my recollection.

5 MR. LEVY: I have a couple of questions I would
6 like to ask in view of Miss Farrow's
7 evidence.

8 CHAIRMAN: I think you better postpone that. We prefer
9 that Mr. Robinson get all that he is required
10 to get so we can go through instead of having
11 these little bites of the cherry. In the
12 circumstances this Commission will have to
13 take the adjournment, we will adjourn for a
14 date to be fixed. Thank you very much. Thank
15 you.

16 ADJOURNMENT TAKEN
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