

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, MAY 3, 2011

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

ATTORNEY MARSHALING EVIDENCE FOR THE COMMISSION

Miss Judith Clarke- Attorney-at-Law

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

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

REPRESENTING MR PATRICK HYLTON

Mr Dave Garcia - Attorney-at-Law

REPRESENTING FINSAC LIMITED

Mr. Christopher Samuda - Attorney-at-Law

GIVING EVIDENCE

DEBTOR

1 **Tuesday May 3, 2011...DEBTOR**

2 COMM. BOGLE: Good morning ladies and gentlemen, this
3 Enquiry is now in session. For the
4 record may we have the names of the
5 attorneys present.

6 MR. SAMUDA: Good morning Commissioners. Christopher
7 Samuda of Samuda and Johnson. I am
8 representing FINSAC Limited.

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

12 MS. CLARKE: Judith Clarke, appearing on behalf of
13 the Commission.

14 MRS. PHILLIPS: Might we have the annotation please.

15 COMM. BOGLE: She is marshaling the evidence on behalf
16 of the Commission.

17 MRS. PHILLIPS: Thank you very much.

18 COMM. BOGLE: Okay. Last time we were here we had
19 DEBTOR. DEBTOR is to
20 continue this morning. DEBTOR, can
21 you please come to the desk.

22 (Witness Sworn)

23 I think the last time you were here
24 there was a Judgement that should have
25 been circulated.

1 I think, Mr. Secretary, you had promised
2 to copy it.

3 MR. DePERALTO: Yes. That has been copied and another
4 document which we got from DEBTOR so
5 let me just check.

6 MR. SAMUDA: May I crave the indulgence of the
7 Commission just to place on record that
8 Samuda and Johnson have been recently
9 retained to represent FINSAC at this
10 Enquiry and indicate that we will be
11 attending the sessions hereafter.

12 COMM. BOGLE: Maybe in the interest of time we could
13 continue. We know that there were the
14 two documents to be circulated. Miss
15 Clarke?

16 MS. CLARKE: In fact, Mr. Chairman, it is my
17 understanding that the documents; the
18 Judgement and the completed loan
19 agreement have in fact been circulated.
20 The latter one has come to my hand this
21 morning but I have not had the
22 opportunity of seeing the Judgement and
23 I am presuming that it has been
24 circulated to my learned friends as
25 well.

1 I believe on the last occasion we had in
2 fact gone some place into the evidence
3 relative to the second part, if you will,
4 of DEBTOR's testimony, i.e., that portion
5 having to do with DEBTOR COMPANY#1 and
6 DEBTOR COMPANY#2, but DEBTOR had
7 indicated, and in fact is still
8 indicating, that there are certain data
9 that are relevant to the first aspect of
10 his testimony that he would like to
11 introduce before we actually continue.
12 These documents based on my instructions,
13 are with respect to his concerns as they
14 relate to DEBTOR COMPANY#3 and DEBTOR
15 COMPANY#4. So perhaps before we continue,
16 DEBTOR could be allowed to indicate, with
17 your leave

18 19 Mr. Chairman,

just what documents he has

20 and what he intends to show by the
21 introduction of these documents.

22 MRS. PHILLIPS: Before you do that, Mr. Chairman, with
23 respect, my friend made reference just a
24 while ago to a loan agreement that she
25 has received a copy of. I have only

1 received last night a copy of a Judgment
2 that the Commissions referred to on the
3 last occasion. I therefore am at a loss
4 as to what agreement she has received
5 and wonder whether in fact I might be
6 afforded a copy.

7 MS. CLARKE: It is in fact incorporated as an exhibit
8 to the Affidavit but my friend would
9 have received it save that a page was
10 missing. So I believe what was copied
11 for us was the full document inclusive
12 now of page 18. That is the loan
13 agreement dated 9th November, 1989,
14 based on my instructions.

15 COMM. BOGLE: Which exhibit was that?

16 MS. CLARKE: I crave your indulgence, sir.

17 MRS. PHILLIPS: For the record I could just say I am
18 joined by Gavin Goffe.

19 MS. CLARKE: I believe it is DEBTOR; AS13, and
20 in fact I think on the last occasion it
21 was apparent that a portion of it was
22 missing. In fact what was included as a
23 page, as the last page, did not belong
24 there. So I think there has been some
25 attempt to remedy it just by the

1 admission of the last page, the page
2 numbered 18.

3 COMM. BOGLE: Yes, the page with the signature was
4 missing. AS13.

5 MS. CLARKE: I am actually looking at mine.

6 MRS. PHILLIPS: AS what?

7 COMM. BOGLE: AS13.

8 MS. CLARKE: It is the Schedule that **is** attached.

9 MRS. PHILLIPS: The other pages are now available?

10 COMM. BOGLE: We stopped at page 17 of the document.

11 MS. CLARKE: There is one now in circulation with a
12 schedule attached.

13 COMM. BOGLE: And there is a signature page?

14 MS. CLARKE: I have not seen the signature page.

15 COMM. BOGLE: The document is still without a
16 signature.

17 MRS. PHILLIPS: I have not seen the circulated document
18 yet.

19 COMM. BOGLE: Miss Clarke, are you saying that
20 document you have, that is now in
21 circulation, has been distributed?

22 MS. CLARKE: That was my understanding based on my
23 interaction with the office. It was
24 handed to me a short while ago and it
25 was in fact one of the documents that

1 wanted some adjustments for completion
2 so in fact when I was submitting I
3 didn't have a look at the entire
4 document. It was just handed to me a
5 while ago and I was told it is one of
6 the documents DEBTOR has brought to
7 meet the request that was made.

8 MR. DePERALTO: DEBTOR brought some documents
9 yesterday which have not been
10 introduced.

11 COMM. BOGLE: What we are dealing with is exhibit AS13
12 and that had stopped at page 17 but the
13 document referred to a schedule and we
14 did not receive the schedule.
15 Miss Clarke is saying that she has got
16 that schedule now and she will now hand
17 it to you.

18 MS. CLARKE: Correction, Mr. Chairman, I am not
19 saying I got that schedule. I now have a
20 document which admits to a page entitled
21 'Schedule'.

22 COMM. BOGLE: Yes, the loan agreement page dated the
23 19th of November.

24 MR. DePERALTO: We got that yesterday evening, it is
25 here.

1 signature page attached to the document.

2 MR. SAMUDA: May I be permitted, Commissioners, just
3 to indicate that Mr. Brian Moodie has
4 just joined us. He also is representing
5 FINSAC.

6 MR. MOODIE: Morning Commissioners. Sorry to be
7 late.

8 COMM. BOGLE: Okay. The other document that we
9 received, we received as well a
10 document, Notice of Appeal, and the
11 Judgement that we were promised seems to
12 be attached.

13 MS. CLARKE: Would that be the Judgement of
14 Mr. Justice James dated November 5, 7 and
15 April 3, 2009.

16 COMM. BOGLE: This is Mr. Justice Jones.

17 MS. CLARKE: And the last date there is April 3,
18 2009; there are three dates, sub-headed
19 'Heard'. The dates indicating the date
20 when the matter was heard.

21 COMM. BOGLE: April 3, 2009. November 5, 7, 2007 and
22 April 3, 2007.

23 MS. CLARKE: That is in fact the Judgement to which
24 the witness referred.

25 MRS. PHILLIPS: Except that the copy of the Judgement

1 attached to the Notice and Grounds of
2 Appeal, appears to have a page misplaced
3 right after the first page. I know this
4 because a copy was sent to me by the
5 secretariat by e-mail and the one sent
6 to me by e-mail reads consecutively. In
7 other words paragraph two follows on
8 paragraph one of the Honourable Mr.
9 Justice Jones' Judgement and it
10 certainly does not have that second page
11 in that position. I am not saying it is
12 not a page, I have not had a chance to
13 read the whole Judgement yet but that
14 page is in the wrong place.

15 MS. CLARKE: My understanding, Mr. Chairman, is that
16 this Judgement was in fact made
17 available to circumstance employees by
18 it. As a document not as part at notice
19 of Appeal and in fact I have been given
20 a copy of the entire Judgement of
21 Mr. Justice Jones standing alone.

22 COMM. BOGLE: The Judgement surely was promised but
23 along with that many must common it's
24 notice of peal sect section adjournment
25 separately circulated by e-mail

1 part of the Judgement.

2 COMM. BOGLE: Okay. Can we move on then.

3 MS. CLARKE: Am I to understand, Mr. Chairman that
4 these are documents to be marked as
5 exhibits?

6 COMM. BOGLE: They may be presented as exhibits, yes.
7 In the first instance - let's go back a
8 bit - in the first instance the loan
9 agreement that is AS13, the part that
10 was missing - AS13, had referred to a
11 schedule and that this schedule now
12 attached to the loan agreement is being
13 put forward as the schedule that had
14 been missing.

15 MS. CLARKE: I haven't heard the witness say that.
16 Perhaps for the benefit of all he maybe
17 permitted to look at it and enlighten us
18 all as to whether or not it does in fact
19 belong.

20 COMM. BOGLE: Can you take him through that.

21 MS. CLARKE: May the document be put in the witness's
22 hand, please, with the schedule
23 attached.

24 (Document given to witness)

25 DEBTOR, could you turn for me please,

1 your Witness Statement now, to the
2 document marked AS13 in your Witness
3 Statement.
4 A: At which paragraph?
5 Q: I don't know the particular paragraph,
6 to AS13, one of the exhibits in the
7 list, the one marked 13, AS13.
8 May I be permitted to assist him?
9 COMM. BOGLE: Yes.
10 A: Yes, ma'am.
11 MS. CLARKE: On the last occasion you will recall
12 that it was pointed out that a schedule
13 to which this document refers was not
14 attached to that AS13; right DEBTOR?
15 A: Yes.
16 Q: So I going to ask you to look at this
17 document standing alone that was just
18 put in your hand that has at the top the
19 letter 'B'.
20 A: Yes. That is not marked 'B' but I have
21 the document.
22 Q: It is not marked B at the time top? At
23 the very top; **this is the certificate**
24 **that this is a true and correct...?**
25 A: Yes.

1 Q: We just want to establish that, that is
2 in fact the same document that you
3 purport to refer to as ASI3 in your
4 Witness Statement. Is that correct?

5 A: Yes.

6 Q: What you are holding in your hand - not
7 the Witness Statement now - it has a
8 last page that is headed up 'schedule'?

9 A: Yes.

10 Q: You are looking at it?

11 A: Yes.

12 Q: Does this page marked 'schedule' in fact
13 represent the schedule referred to in
14 this loan agreement?

15 A: Yes.

16 Q: It is the schedule applicable to this
17 loan agreement?

18 A: Yes.

19 Q: Thank you, DEBTOR.

20 MRS. PHILLIPS: Before it is admitted in evidence
21 Commissioner, if you look at ASI3 and
22 look at page four, and go to the bottom
23 of that page, you will see Item 6 in
24 clause 5.2 and if you go to page 6 in
25 the top clause you will see a reference

1 to Item 7 of the schedule?

2 A: Yes.

3 Q: And if you go to page 9, the penultimate
4 paragraph, you will see Item 8 of the
5 Schedule and if you go to page 11 the
6 last sub paragraph being letter (i) you
7 see a reference to Item 9 of the
8 schedule. You will notice that what you
9 have been handed - there are perhaps
10 others, I am just checking as I am going
11 through but those are the ones that have
12 been picked. You will notice that what
13 has been presented to you stops at Item
14 5.

15 COMM. BOGLE: Yes.

16 MS. CLARKE: Based on the witness's evidence that,

17 that to him represents the schedule, I
18 would ask that it be admitted,
19 nonetheless. I am sure the Commission
20 will deal with it appropriately having
21 regard to the entirety of the data. On
22 the evidence this is what the witness
23 said that it is.

24 COMM. BOGLE: I think we could accept this but

25 recognizing there seems to be on the

1 face of it additional pages not
2 represented.

3 MRS. PHILLIPS: So we could designate it as the first
4 page of the schedule.

5 MR. SAMUDA: I believe what would be the correct
6 procedure would be first page of the
7 schedule because it is incomplete.

8 MS. CLARKE: My difficulty is that Commission the may
9 so find but we are now dealing with the
10 evidence of a witness. However flawed
11 it may turn out to be this is his
12 evidence. To the extent that it may
13 seem to speak for itself in that there
14 is an Item 1 at the top, incongruous as
15 it may sound, we don't know that this
16 represents the first page of the
17 schedule. The evidence as we have it so
18 far is not that it represents the first
19 page of the schedule. We don't have any
20 evidence from anywhere saying it
21 represents the first page of the
22 schedule. This, on the witness's
23 evidence is what to him, what based on
24 his evidence represents the schedule
25 that was attached to the agreement. It

25 COMM. BOGLE: Okay. Yes go ahead.

1 MS. CLARKE: DEBTOR, in relation to DEBTOR COMPANY#3,
and
2 DEBTOR COMPANY#4, could
3 you just for the purposes of this
4 Commission itemize the documents that
5 you have that you are interested in
6 introducing additional to the ones that
7 were introduced already. Just itemize
8 them without giving any evidence on them
9 at first.

10 A: Well, what I fear is that we get bogged
11 down with the details of documents and
12 we miss the core
13 of the evidence I would like to bring
14 before this Commission. supplied all of
15 these documents long ago and I think there
16 is a problem with getting the document
17 and the witness statement and matching
18 all of those and I have to apologise to
19 Miss Clarke because she set out the way
20 she would advise me to present the things
21 and she allowed me to do my Witness
22 Statement and I brought all of those, but
23 in between and the space you have there
24 and all of that, there is a total

disarrangement of the documents and how

1 list, the Table of Contents to the
2 witness statement that I prepared and
3 there are some very critical things that
4 you need to understand if you are going
5 to get to the root of what we are all
6 about here. And take for example...

7 COMM. BOGLE: DEBTOR, based on what you are saying,
8 we believe that we should continue where
9 we left off. When you have finished
10 that then we can come back to all that
11 you have. So let us continue where we
12 were at this stage and when you have
13 finished with that we will come back to
14 all of that.

15 A: Only that Mr. Chairman, that this
16 document is part of what was presented
17 but did not have to page yet.

18 COMM. BOGLE: Yes, but we will still leave that. We
19 will come back to that.
20 We will leave everything and I am going
21 to ask Miss Clarke to just pick up where
22 we left off the last time we were here
23 and come back to it.

24 MS. CLARKE: For my benefit I will just ask, have we
25 been afforded a copy of the verbatim

1 notes to be reminded as what the last
2 thing was. My recollection is that we
3 were at paragraph 57, I just want to be
4 certain.

5 COMM. BOGLE: My recollection, unfortunately I do not
6 have the notes but we were at 61. That
7 is my recollection.

8 MS. CLARKE: I recall evidence having been given
9 relevant to paragraph 60 so perhaps you
10 are correct it's 61.

11 COMM. BOGLE: 61 is where we are at.

12 MS. CLARKE: DEBTOR, could you just, following on
13 the order from the Chair continue from
14 paragraph 61 which is at page 9 of the
15 witness statement please, and read for
16 us paragraph 61 to 62.

17 DEBTOR: **"In February 1992 Eagle Merchant Bank**
18 **wrote to DEBTOR COMPANY#1**
19 **to say that the principal borrower was**
20 **in default of its debts. While**
21 **negotiations were taking place**
22 **XXX Limited -- which**
23 **is a guarantor -- made further payments**
24 **under protest as follows:**
25 And they have the list there: 140, 40,

1 30, 90, 60, total of 360,000.

2 Q: And paragraph 62, please.

3 A: **Manufacturers Merchant Bank approached**
4 **Eagle Merchant Bank on behalf of an**
5 **associate company and Eagle Merchant**
6 **Bank supplied a statement of debt owing**
7 **by DEBTOR COMPANY#1. This statement**
8 **included amounts subsequently identified**
9 **to be an unrelated the line of credit to**
10 **XXX Company. And See letter**

11 **dated May 19 1993 from Eagle Merchant**
12 **Bank to Manufacturers Merchant Bank.**

13 Q: Okay, that is referred to in the Witness
14 Statement as DEBTOR or AS 22. Could you
15 turn to the first one for us please,
16 DEBTOR?

17 A: Yes.

18 Q: Before you look at that exhibit in
19 relation to paragraph 61, do you,
20 DEBTOR, happen to have any data proving
21 the actual payments that you have listed
22 in paragraph 61. I have 140,000, 40,
23 30, 90 and 60,000 totaling 360,000?

24 A: Yes.

25 Q: And do you have any document that deals

1 with that?

2 A: Yes.

3 Q: Do you have it here now?

4 A: Yes. By the time I am finished looking
5 for these documents I am saying, I don't
6 even remember what it was that I was
7 saying and I really need to present the
8 thing in the order that I have it.

9 Q: We can come back to that at some point.
10 If you have it...

11 A: Yes, I have all those documents.

12 Q: ...I am sure you will be afforded the
13 opportunity to supply them.

14 A: Yes, that's what I was trying to do,
15 having listed the documents that are
16 here that I have been supplied.

17 Q: AS 22, that is the letter dated May 19,
18 1993, from Eagle Merchant Bank of
19 Jamaica Limited to Manufacturers
20 Merchant Bank Limited.

21 A: Yes, I have that.

22 Q: Which states that this statement
23 includes the amount subsequently
24 identified to be an unrelated line of
25 credit to DEBTOR COMPANY#1.

1 Q: Could you point out the aspect of that
2 document that supports that assertion?

3 A: You see a star beside it. Line of
4 Credit: xxxxx, Principal: Xm;
5 Interest to 31.5.93, Xk; Total:
6 Xm.

7 Q: And it's unrelated to your...

8 A: Yes, when you look at the Witness
9 Statement of FINSAC people and you come
10 to look at the Statement of Claim you
11 will see that, that has been properly
12 omitted.

13 Q: So are you saying it was not taken
14 account of, in the court matter that was
15 not taken account of in the computation
16 of your liability?

17 A: This was not in the court matter. But
18 the point I am trying to make here is
19 the sloppiness of the accounting that
20 has come to be a part of the evidence
21 that went before the court.

22 MS. CLARKE: Yes. AS 22, Mr. Chairman, and the
23 witness has indicated that the aspect
24 that is relevant is at the asterisk on
25 the document, that line of credit xxxxx

1 and the items that follow horizontally.
2 Paragraph 63 DEBTOR, could you read
3 paragraph 63.

4 A: Paragraph 63?

5 Q: Yes, please.

6 A: **On June 4th 1993 Eagle Merchant Bank**
7 **wrote to the guarantor with statement**
8 **claiming that DEBTOR COMPANY#1 was in**
9 **default, AS 23. And on June 17,1993**
10 **Eagle Merchant Bank filed suit in the**
11 **Supreme Court claiming outstanding debt**
12 **owing to Eagle Merchant Bank, the**
13 **guarantors were named as defendants.**

14 Q: AS 23 Mr Chairman and Commissioners, is
15 a letter addressed to DEBTOR
16 care of DEBTOR COMPANY#1 and
17 DEBTOR COMPANY#2. It's dated June 4,
18 1993 indicating as outlined in the
19 Witness Statement that the above
20 captioned borrower DEBTOR COMPANY#1
21 and DEBTOR COMPANY#2 has
22 defaulted in payment of its account, and
23 there are two facilities with a second
24 interest indicated there. I have
25 refrained from reading the document

1 because I believe there has been in the
2 foregoing testimony data, specific data
3 given relative to these figures. I
4 don't know Mr. Chairman, if you would
5 want the document to be read into the
6 evidence.

7 COMM BOGLE: The statement you are referring to is
8 AS23?

9 MR. CLARKE: So, there are two facilities that I see
10 on the document. It says:
11 **Demand Loan #xxxx** and;
12 **Line of Credit #xxxx** sorry, it should be
13 really 3. And then a third;
14 **Line of credit #xxxxx** with the interest
15 figures.

16 COMM BOGLE: 3 facilities, I am sorry.

17 MS CLARKE: 3 facilities.

18 A: And you will note that there were four
19 facilities in one of the claims made by
20 the Eagle, the one that I referred to,
21 XXX Company.

22 COMM BOGLE: On May 19th, there were four facilities?

23 A: Yes, being claimed.

24 COMM BOGLE: On June 4th they referred to 3
25 facilities. The one I just pointed out

1 at the asterisk does not appear on this
2 recent letter, on the letter dated
3 June 4?

4 MS CLARKE: Read from paragraph...

5 COMM BOGLE: So AS 23 accepted in evidence?

6 MS CLARKE: That is so, Mr. Chairman. Could you read
7 paragraph 64 through to the end of 65.

8 A: **The Defendant's name in the suit**
9 **(including myself), followed a parallel**
10 **course by continuing negotiation with**
11 **Eagle Merchant Bank with the support of**
12 **a representative from Manufacturers**
13 **Merchant Bank and also applied to have**
14 **Eagle Merchant Bank add DEBTOR COMPANY#1**
15 **as a co-defendant. The latter**
16 **application lasted for over three years**
17 **up to the Court of Appeal where it was**
18 **finally ruled that Eagle Merchant Bank**
19 **need not add the principal borrower...**
20 **Around May, 1994 DEBTOR COMPANY#1 gave**
21 **Eagle Merchant Bank an agreement to**
22 **sell its property at XXX Street**
23 **for the sum of J\$Xm. This**
24 **property formed part...**

25 COMM BOGLE: Just a minute. I hear someone talking,

1 could you please be very quiet because
2 it's feeding back up here. If you need
3 to talk please vacate the room where you
4 can talk aloud.

5 Co ahead, DEBTOR.

6 A: **This property formed part of the**
7 **securities offered by DEBTOR COMPANY#1.**
8 **The deposit of \$Xk accompanied**
9 **the agreement which had a special**
10 **condition that the seller and purchaser**
11 **would pay all costs which meant that the**
12 **gross proceeds would go to Eagle**
13 **Merchant Bank. See copy of agreement**
14 **dated 16th September, 1994 DEBTOR 24.**

15 MS CLARKE: That document we are just going to
16 simply ask that it be admitted as
17 identified, as AS 24, if it pleases you,
18 Mr. Chairman. This is an agreement
19 dated 16th September 1994. Vendor,
20 DEBTOR COMPANY#1 & DEBTOR COMPANY#2
21 and the purchaser is
22 xxxx, AS 24.

23 A: Only Mr. Chairman, if I had my way of
24 presenting, this document would be
25 included in the Discharge of Mortgage

1 and all the other documents including a
2 Memorandum of Complete Satisfaction to
3 give a complete picture. What we are
4 doing here is taking out the pieces as
5 it is in the statement.

6 COMM BOGLE: We will get the picture as we go along.

7 A: I look forward to that, sir.

8 COMM BOGLE: We will get the picture. Okay, this
9 document AS 24 accepted in evidence.
10 Miss Clarke?

11 MS CLARKE: Okay. DEBTOR I believe you are going
12 to read from paragraph 66 now, I think,
13 where perhaps based on what you just
14 said your way is probably going to be
15 reflected from paragraph 66 in terms of
16 the sequence and 68. Could you read for
17 us, please.

18 A: Yes. **"The Chairman of Eagle Merchant**
19 **Bank and his the Deputy executed a**
20 **Memorandum of Complete Satisfaction --**
21 **"AS 25" which was subsequently filed**
22 **with the Registrar of Companies. Along**
23 **with mortgage discharged documents --**
24 **("AS 26") there was the holding out by**
25 **Eagle Merchant Bank that the debt for**

1 **which the mortgage stood as security**
2 **(being \$Xm plus interest) was**
3 **fully satisfied. A computer printout**
4 **statement of account showing zero**
5 **balance -- "AS 27" was given to us in**
6 **about 1995.**

7 Q: All right, could you pause there and
8 could we just look at the document, the
9 Memorandum of Complete Satisfaction and
10 that computer printout which you
11 referred to as AS 25, 26 and 27 and the
12 discharge documents too.

13 A: I don't see those in this thing now.

14 Q: AS 25 is attached to your Witness
15 Statement, Memorandum of Complete
16 Satisfaction registered mortgage
17 DEBTOR COMPANY#1.

18 A: Yes, 24.

19 Q: You are looking at it and it actually
20 comes right after...

21 A: 26.

22 Q: You haven't seen 25 in your affidavit or
23 statement?

24 A: Yes, I have 25.

25 Q: Yes.

1 A: And 26.

2 Q: And it follows right after the agreement
3 that you have said you would have put
4 along with it at 24 if you had your way.

5 A: Yes.

6 Q: AS 26, the Discharge of Mortgage.

7 A: Yes, 25, 26.

8 Q: And 27.

9 A: And 27.

10 Q: Discharge of Mortgage would have some
11 attachments?

12 A: Two attachments.

13 Q: And AS 27 now would be that computer
14 printout which based on your evidence
15 shows zero balance?

16 A: Yes.

17 Q: All right, could you for the benefit of
18 the record, I am going to ask the
19 witness Mr. Chairman if you will, to
20 read just the body of AS 25, the
21 Memorandum of Complete Satisfaction of a
22 registered mortgage.

23 A: Yes, AS 25?

24 Q: Yes, DEBTOR.

25 A: Yes, ma'am it's a...

1 Q: Read from the portion that says Eagle
2 Merchant Bank of Jamaica Limited.

3 Q: **"Eagle Merchant Bank of Jamaica Limited,**
4 **a Company incorporated under the laws of**
5 **Jamaica and having its registered Office**
6 **at 24 to 26 Grenada Crescent, Kingston 5**
7 **in the parish of St. Andrew HEREBY GIVES**
8 **NOTICE that the registered charge**
9 **created by a MORTGAGE dated the 9th day**
10 **of January 1990 and made between**
11 **DEBTOR COMPANY#1 AND DEBTOR COMPANY#2**
12 **and EAGLE MERCHANT BANK**
13 **OF JAMAICA LIMITED the particulars**
14 **whereof were registered with the**
15 **Registrar of Companies on the 29th day**
16 **of January 1990 was wholly satisfied on**
17 **the 19th day of December 1994 the debt**
18 **for which the charge was given having**
19 **been paid or satisfied".**

20 And this is signed by the Chairman of
21 Eagle Merchant Bank, the Deputy Chairman
22 of Eagle Merchant Bank and witnessed by
23 the Legal Officer of Eagle Merchant
24 Bank.

25 Q: And you are saying DEBTOR, that this

1 document represented what in your mind?
2 This document represents what it says on
3 the face of it.

4 Q: Which is?

5 A: That it is a Memorandum of Complete
6 Satisfaction, that the debt for which
7 this mortgage was given, and there were
8 other mortgages, this was a collateral
9 mortgage as you will see.

10 Q: You said it represented?

11 A: The debt for which this mortgage was
12 given has been fully satisfied.

13 4: The debt for which this mortgage has
14 been given. And what is the debt for
15 which this mortgage was given?

16 A: The debt for this mortgage was given in
17 26, in the Discharge of Mortgage
18 Document.

19 Q: And what would that be?

20 A: Amount secured \$xM with interest
21 and further stamped to cover an
22 additional \$xxxM and that has
23 been satisfactied.

24 Q: And you are saying that figure indicated
25 the Discharge of Mortgage or the sum

1 with interest would have represented
2 your entire indebtedness to Eagle
3 Merchant Bank?

4 A: That the sum that represented the
5 mortgage, amount on the mortgage
6 instrument and the amount...

7 Q: Okay, let me ask you again, are you
8 saying that the Memorandum of Complete
9 Satisfaction and the amount indicated in
10 the discharge would have represented
11 your entire indebtedness to Eagle
12 Merchant Bank?

13 A: Yes. That is what that Memorandum of
14 Complete Satisfaction says and what the
15 fact is. And you if you look at the
16 pages behind 26 you will see that it was
17 a collateral mortgage, it's wasn't a
18 mortgage that was entered into to buy
19 that premises, it was a collateral
20 mortgage which was also part of the
21 debenture and part of other securities.

22 Q: With your leave Mr. Chairman, I believe
23 this may be a point in which you could
24 introduce the Judgment of Justice Jones,
25 this is a document that the witness has

1 put forward, I don't know it has been
2 marked but I would like to just have the
3 witness give testimony to this
4 Commission relative to his sense as it
5 relates to a particular portion relative
6 to the evidence now being given.

7 A: I would ask...

8 Q: Hold on please, DEBTOR. Have you
9 marked it?

10 COMM BOGLE: Which one?

11 Q: Judgement from Mr. Justice Jones.

12 COMM BOGLE: AS 20.

13 MS CLARKE: It's marked up here but I don't think
14 that's our mark so perhaps we could now
15 mark this.

16 COMM BOGLE: 27 A

17 MS CLARKE: I have a difficulty, I was about to say
18 A27, that appears twice be marked
19 because we could mark this as 27 A.

20 COMM BOGLE: 27 A.

21 MS CLARKE: I would like to read -- I believe the
22 witness indicated on the last occasion
23 that this is the judgment on which he
24 has appealed and has provided to the
25 Commission a copy of his Notice and

1 Grounds of Appeal to the extent that he
2 wants to bring to the attention of the
3 Commission, the substance of the
4 judicial determination as it relates to
5 this very matter that he was complaining
6 about. I would just like to read a
7 portion of this judgement as it relates
8 to how the court deals with the
9 Memorandum of Complete Satisfaction for
10 the Commission to benefit and for
11 DEBTOR.

12 A: I don't want to be difficult or
13 contentious but I am representing myself
14 because Miss Clarke isn't representing
15 me. I would wish she would represent me
16 but she is representing the Commission
17 and therefore I would like to put my
18 evidence or else there would be...

19 COMM BOGLE: Miss Clarke is marshalling the evidence
20 on behalf of the Commission which means
21 that she is taking your witness
22 statement, these statements were made by
23 you and she is simply taking you through
24 in some form arranged and organised
25 order and you will be allowed all the

1 time that you wish to add information to
2 whatever is here but we are trying to get
3 some order into what we are doing and so
4 there is a witness statement here which
5 you signed and what we are trying to do is
6 go through the Witness
7 Statement in some order. When the
8 Witness Statement is finished if you have
9 other information that you would like to
10 put to the Commission the Commission will
be quite willing to hear

12 it.

13 A: But Mister, please, it's the Witness
14 Statement of FINSAC rather than the
15 judge's reason and the Statement of
16 Claim that would make sense that we go
17 on to then we can go on to the Judge's
18 reasons for judgement because you would
19 have to see what FINSAC is saying, what
20 was before the Judge for him to make his
21 judgment before we look at what the
22 judgement says.

23 COMM BOGLE: You see, DEBTOR, we are not here to
24 review what the court says. The court
25 has made a Judgment, you have appealed

1 that Judgment. You are applying to this
2 Commission to put forward a Witness
3 Statement to give your side of a story.
4 In other words, you are saying this is
5 what happened to me, these are the
6 things that took place. That is really
7 what we are trying to get from you.

8 A: I understand.

9 Q: Not necessarily what Justice Jones ruled
10 or his Judgment. What we want from you
11 are the documents and the information
12 that you have so that this Commission
13 can deal with the matter but we are not
14 here to review and to object to or to do
15 anything with the Judgment that was
16 given to you by Justice Jones.

17 A: I understand that, Mr. Chairman. The key
18 to my evidence is the representation
19 thereof in the Witness Statement and the
20 Statement of Claim that went to the
21 court.

22 COMM BOGLE: I understand that is something that the
23 court dealt with, the court dealt with
24 that. Was the Witness Statement that
25 you are referring to and the Statement

1 of Claim, were those documents brought
2 in front of the court?

3 A: Yes, but it's not brought in front of
4 you yet and you are independent.

5 MS CLARKE: Mr. Chairman, perhaps I can facilitate
6 us advancing somewhat. If it is
7 DEBTOR is saying that before the
8 particular dictum is put to him he would
9 like to have certain aspects of the
10 evidence which he has actually brought
11 put before the Commission, perhaps for
12 his comfort the document could be put
13 prior because I was dealing with the
14 particular portion that he has mentioned
15 just now that you have relative to the
16 Memorandum of Complete Satisfaction and
17 he has made available to Commission a
18 copy of the judgement so I was going to
19 just seek to tie the reference in the
20 judgement to that particular document
21 and ask him to comment from there but if
22 he is more comfortable with the witness
23 statement of FINSAC representative be
24 put before he Commission first...

25 A: And the Statement of Claim.

1 MS CLARKE: I would be prepared with the Chair's
2 leave to pass for your attention a copy
3 of a Witness Statement that DEBTOR
4 has supplied recently. A witness
5 statement of Martin Gooden was used at
6 the trial, I believe it was circulated
7 on the last occasion but it was not
8 actually entered into evidence. That
9 was in fact the point that I think at
10 which we adjourned certainly in terms of
11 might have attention based on my
12 instructions from DEBTOR to put in
13 the Witness Statement of Mr. Martin
14 Gooden. Are these available?

15 COMM BOGLE: Yes, they are available.

16 MS CLARKE: So DEBTOR...

17 COMM ROSS: Sorry, one second.

18 *(Chairman confers with members)*

19 MS CLARKE: If you would allow me Mr. Chairman, to
20 just ask DEBTOR something very
21 specific relative to this document in my
22 attempt to get back to the matter at
23 paragraph 66 of his Witness Statement, I
24 would seek to accommodate him by
25 asking...

1 this Commission will not be going
2 into, assessing or going into the
3 Judgment of the Court.

4 A: But Mr. Chairman, you have asked for the
5 Judgement or the reason for the Judgment
6 to be put in evidence, I didn't ask for
7 that.

8 COMM BOGLE: DEBTOR, a document was referred to,
9 we got the document, it's for us to make
10 use of the document as we see fit and we
11 are saying that this Commission of
12 Enquiry will not be going into the
13 Judgement of the Court, we will not be
14 discussing the Judgement of the Court,
15 The Court has handed down a Judgement,
16 you appealed that Judgement and all the
17 documents that you are now mentioning
18 that you believe the Court might have
19 not dealt with correctly or fairly that
20 is a matter for appeal and therefore I
21 don't think it's for us to deal with
22 that matter here. And so we will not --
23 and I am ruling on that, we will not be
24 dealing with that here.

25 A: Well, Mr. Chairman. There is no point

1 in my testifying. I have evidence
2 which will show you what FINSAC, which
3 you are enquiring into, has falsified the
4 information and has distorted
5 information which led to a court action.
6 If you don't want to get into that...

7 COMM BOGLE: Hold on DEBTOR, we are dealing with
8 this and if the matter, the document
9 went to the court - were those documents
10 presented to the court? I am just
11 asking you, were those documents
12 presented to the court?

13 A: I am finished with the court, I am not
14 talking about the court, I am talking
15 about FINSAC.

16 COMM BOGLE: Okay, what about FINSAC?

17 A: I am pointing out to you the Statement
18 of Claim made by FINSAC. That is not the
19 court document, that is the statement
20 from FINSAC. I am talking about the
21 Witness Statement from FINSAC and
22 falsification of facts in those.

23 Q: The Witness Statement was presented to
24 the court?

25 COMM ROSS: DEBTOR, I think the best thing for us

1 to do is as Chairman said, again we
2 could just finish up with your Witness
3 Statement. We are not here to go through
4 and review the decisions of the court. If
5 you have evidence to support your
6 contention, what we really want to know
7 from you is what is your contention of
8 unfair treatment. How do you feel you were
9 wronged either by the institution that you
10 dealt with or by FINSAC or whatever it is.
11 What is the wrong, injustice or unfair
12 treatment that you suffered and I think
13 that you would be best served in providing
14 us with the information and supporting
15 documents that you have to support your
16 contention. Taking us through the
17 Judgements of the court really is not
18 going to help in advancing your position
19 and it's not going to help us in our
20 Enquiry. So if we could ask you to focus
21 on the evidence that you have to produce
22 to support your contention and if you
23 could outline clearly to us what is your
24 contention of the unfair treatment or
25

1 the injustice which you have suffered,
2 that would help your case and it would
3 help us in our Enquiry.

4 A: Yes, Mr. Commissioner, I wish I would
5 get a chance to do that. I wish I would
6 get a chance and not prescribed by
7 anything -- I am not presenting a case
8 of unfair treatment by the court. The
9 court acted on information provided by
10 FINSAC, I am saying that FINSAC
11 fraudulently distorted documents that
12 went before the court, and that is what
13 I want to present to you.

14 COMM. ROSS: Please go right ahead and do that.

15 Q If I had the witness statement and...

16 COMM. BOGLE: Go ahead and do that.

17 A ...and the statement of claim I will
18 show you the method that is the heart of
19 your investigation.

20 COMM. BOGLE: Do you have those documents?

21 A Yes, I have presented them to the
22 Commission. The witness statement...

23 MISS CLARKE: DEBTOR is that the witness statement
24 of Mr. Martin Gooden that you are
25 referring to?

1 before this Commission, judgments of
2 court that have been put before this
3 Commission and admitted into evidence
4 and given exhibit numbers. In this
5 particular case there are two judgments
6 that were given exhibit numbers on the
7 last occasion. I do not know by what
8 means a document having been admitted
9 into evidence and this third one has
10 just been given an exhibit number, a
11 document admitted into evidence, that
12 reference to it can be restricted
13 thereafter, I am not sure what legal
14 principle that is but I am certainly
15 entirely unfamiliar with it; it is
16 either that matters that are sub judice
17 should not properly be the subject of
18 this Commission which is a point that
19 has been taken repeatedly and the
20 Commission has said it does not matter
21 to it whether or not the matter is sub
22 judice or once the court documents come
23 in, then there is free reference to
24 them. I don't see that there can be any
25 half way house in that regard.

1 for the Commission to deal with
2 specific aspects of the court's position
3 and determination of the matter, while it
4 is still on appeal, the Commission is not
5 prepared to hear him to the extent that
6 he now wishes to bring before the
7 Commission a complaint or a contention
8 relative to the propriety or the
9 rightness of the court's decision. It is
10 not that the Commission is saying that
11 matters that have been the subject of
12 judicial proceedings carte blanche cannot
13 be made subject of the
14 proceedings here or the document cannot
15 be put, I believe what is being said to
16 DEBTOR, if you intend for us to go into
17 the subject matter, the substance of the
18 evidence that was given and the essence
19 of the judge's ruling, we are not
20 prepared to go this far suffice it to
21 say the matter is on appeal.
22 Another thing which my friend has said
23 which, you know, I believe may lead us
24 all into error and I am not going to
25 quote her verbatim, I think is has to do

1 with her assertion that a document
2 once in, you know, it cannot be limited
3 as to for what purposes it is used. My
4 friend well knows that even in more
5 restricted quarters, a document maybe
6 admitted and it may be expressly stated
7 when a document is admitted into evidence
8 that based on what has gone before, based
9 on the major substance of this document,
10 it is being tendered and admitted for
11 this purpose and this purpose only, so
12 you know in fact I am surprised to hear
13 my friend says that because on occasions
14 when certain documents were being put in
15 blank and it was being canvassed that
16 look, this has been the procedure before
17 and it doesn't really matter, it is a
18 concern that one has as to you know, how
19 then, given the fact that it hasn't been
20 authenticated, is anybody going to refer
21 to it for any aspect of substance, so I
22 don't believe that my friend is being as
23 candid as to the proceedings so far
24 because what the Chairman is saying is
25 not that because it is the subject of

1 the judicial proceedings we won't hear
2 it, it is that we are not prepared at
3 this point to make any effort to divide
4 and analyze and assess the essence of
5 the outcome of any of the court
6 proceedings, especially in circumstances
7 where these very issues which you raised
8 in these court proceedings are on
9 appeal.

10 COMM. BOGLE: Okay, thank you. At this time I think
11 it is opportune for us to take ten
12 minutes break. So we will break at this
13 point.

14 B R E A K

15 ON RESUMPTION (Proceedings started
16 without steno-writer)

17 MRS. PHILLIPS: ...because I have never been less than
18 candid with any tribunal, this or any
19 other in all my years of practice. I
20 would need further and better
21 particulars of that. I do not recall any
22 of these judgments being limited or
23 specifically demarcated to any purpose.
24 They are admitted and put on numbers, so
25 I would like to hear from my friend what

1 it is that I am supposed to have been
2 less than candid with this Commission
3 about and I would like to hear it now.
4 MISS CLARKE: Am I expected to respond Mr. Chairman?

5 Perhaps I would only seek to assist my
6 friend. Probably I should first
7 indicate that I should probably, from
8 where I sit, should be suitably
9 intimidated by more than veiled threat
10 that was issued to me during the break
11 by my learned friend, but perhaps if she
12 wishes to have the further and better
13 particulars in terms of the specific
14 matters to which I referred in respect
15 of which I opined that having regard to
16 what has often been said and what the
17 proceedings have been that the
18 contention is less than candid, perhaps
19 my friend would want to have the
20 verbatim notes read, I have no further
21 and better particulars to give to my
22 learned friend but I would repeat, as I
23 said, perhaps not repeating verbatim,
24 because I do not have that facility just
25 now, that insofar as my friend was

1 suggesting that the determination of
2 the chair not to permit DEBTOR to use the
3 judicial data in a certain way and relate
4 it to the rulings that have gone before,
5 it is an appreciation of the proceedings
6 that is less than candid in terms of how
7 we all know that the data had hitherto to
8 have been used, suffice it to say that my
9 learned friend has some seniority in
10 these proceedings, if nowhere else, as it
11 relates to how these matters have
12 proceeded. I have no further and better
13 particulars to give save to attempt to
14 repeat what I have just said and to
15 indicate before this Tribunal that my
16 disappointment with the approach during
17 the break of my friend relative to how
18 she felt about the matter because I
19 would, in all of the dignity that my
20 training has afforded me, indicate to
21 this panel that in my approach to this
22 Commission, in my dealings with my
23 colleague, it's never personal. I attempt
24 on every occasion to stay with the issue
25 and I was dealing

1 with a particular issue, so if my friend
2 has taken personal offence to anything
3 that I have said, I will go as far as to
4 say with a recanter that I can muster
5 and as far as I mean it, that no
6 personal offence is intended and I am
7 staying with the issue. I don't know if
8 from hereon she wishes to make an
9 application for the further and better
10 particulars, which I am not able to
11 supply. I can only ask, if she insists,
12 that reference be made to the notes.

13 COMM. BOGLE: As I said on that note we will continue
14 and the adviser, legal adviser of the
15 Commission will take us through the
16 points on which we adjourned.

17 JUSTICE DOWNER: First of all, I would like to make a
18 clear distinction between certain
19 judicial rules and when some matter is
20 decisive the factor. So far as the sub
21 judicea rule is concerned, what it is
22 saying that there should be no comments
23 in fact when a matter is before the
24 court. As far as the res judicata rule
25 is concerned, it is stating that if a

1 matter has been decided by the
2 appropriate tribunal as this matter was,
3 then in fact the only remedy is to appeal
4 and had I known that there was a final
5 judgment as distinct from interlocutory
6 Judgement I would advise the Commission
7 not to hear DEBTOR at all. So far as the
8 other matters raised, so far as I am
9 concerned, it is not a matter of
10 completing submission or not completing
11 it if the matter has been decided by the
12 court binding on the whole world. So far
13 as judgments are concerned, there is no
14 necessity really to mark them as
15 exhibits. Any
16 Commission or tribunal should take note
17 of judgments of the court, so the fact
18 that they have been marked by exhibits
19 doesn't change their status as in fact
20 coming especially from the Superior Court
21 of Records which is the Supreme Court. So
22 far as the practice of the Commission is
23 concerned about judgments being put in, I
24 emphasize that where there is an
25 interlocutory judgment, then

1 the Commission has a right to look at it
2 as they do have a right to look at final
3 judgments except that in the case of
4 final judgments there should be no
5 enquiry by the Commission. So if
6 DEBTOR does not have anything outside
7 the matter which has been decided in
8 court, I will advise the Commission not
9 to hear him any further.

10 COMM. BOGLE: Okay DEBTOR, you heard what the
11 adviser to this Commission, the legal
12 adviser to this Commission has said and
13 what we are saying is what we have said
14 before that any matter outside of the
15 judgment of a court and the documents
16 which the court ruled on, then we will
17 surely be willing to continue to hear
18 your submissions but anything that has
19 to deal with the actual judgment of the
20 court, then such matters we will not be
21 dealing with at this point.

22 A Mr. Chairman, I don't know where it came
23 from that I was dealing and asking the
24 Commission to deal with the judgment of
25 the court. I was making reference to

1 what the case of FINSAC is and I can
2 only make that reference if -- not from
3 what I am saying but from what their
4 document is saying and therefore by
5 reference to a document whether it was in
6 the court or not in the court, by
7 reference to those documents, are that
8 those documents represent the position of
9 FINSAC. Why it is taken that I am asking
10 the Commission to make judgment on a
11 court ruling? I have heard that before,
12 and I cannot understand why that line is
13 being followed. I have documents here
14 which will show that the modus operandi
15 of FINSAC has been to distort documents
16 and to make false statements and I am
17 prepared to prove that before this
18 Commission. If this Commission feels
19 that, that is out of your purview then so
20 be it but could you please say it. Don't
21 put it that I am asking you to deal with
22 the court ruling because I am not. I am
23 asking you to look at a flow of
24 information on how FINSAC operates and
25 the way they have been able

1 to do it is by first of all taking the
2 sloppiness of the banks and the poor
3 record and sometimes of us as affected
4 parties, they take that knowing the
5 facts, but nonetheless have sworn
6 statements to the court which falsify
7 those facts. Now if you can't look at
8 that, you are not going to be able to
9 find, I suggest, I have been with this
10 for very long, you are not going to find
11 out what is going on until you raise up
12 the rock and see what comes from
13 underneath it and how they have gone onto
14 put, to abuse our court system and that
15 is what the whole cover up was all about,
16 the abuse of the court system and how, for
17 example, I have here an affidavit that
18 says that there were amounts outstanding
19 at a particular time and that was the
20 subject of a promissory note. You have
21 been through the promissory note and that
22 is what goes to the court, that is what
23 the court sees, that mortgage granted so
24 and so has not been paid and at such a
25 time the amount

1 was so much. I have original bank
2 statement which shows that the amount of
3 \$xxxK
4 was in the
5 account, but what went before the court
6 was that we had overdraft facility of
7 \$xxx thousand.

8 COMM. BOGLE: DEBTOR, may I suggest to you that at
9 the last, when we were last here, we
10 went through all of that, you provided
11 all of those information and that was
12 dealt with. So I can't understand when
13 you are saying you wish to present, when
14 that particular statement that you are
15 mentioning there you presented it to us
16 previously and that was dealt with. So
17 you are making a case to say we are not
18 allowing you to present which is not
19 right. You presented and we dealt with
20 that same matter the last time we were
21 here where you showed, provided us with
22 documents to indicate that there was
23 money owed to you, that was done on the
24 last occasion and we went through all of
25 that. Now what you are now doing, I

1 suggest, is that after doing that and
2 that was complete, you are now looking
3 at a comparison between that and you are
4 now going to say that went to the court
5 and whatever. Now, we are saying all of
6 that was dealt with the last time, that
7 was dealt with, so it is not right for
8 you to say we are not allowing you or we
9 have not allowed you to, that is not a
10 new document, we have it here and we
11 dealt with it so what we are saying,
12 your witness, in your witness statement
13 you gave evidence the last time that
14 covered all of that. Now to the extent
15 that you have additional areas in the
16 witness statement that you wish to cover
17 fine, we will allow you to, but going
18 back to that document is simply going
19 back over what we went through the last
20 time.

21 A Well, with respect Mr. Chairman, if we
22 dealt with this the last time....

23 COMM BOGLE: We did, not if, we did.

24 A My recollection is that Commissioner
25 Ross was flabbergasted that we have a

1 bank statement showing \$xxx
2 thousand and somebody of his
3 status and intellectual capacity is
4 flabbergasted and this is a public
5 hearing, then perhaps there are also
6 members of the public who are also
7 baffled that you could have a bank
8 statement showing credit balance of \$xxx
9 thousand,
10 and yet there is an
11 affidavit which goes to the court which
12 tells the court that you owe in respect
13 of this account \$xxx
14 thousand. Further, I could show you...
15 COMM BOGLE: DEBTOR, again I will say...
16 A You did not see the paid cheques last
17 time.
18 COMM BOGLE: Again I will say we saw the backs of
19 cheques and we had asked for them to be
20 copied, we know about all of that as
21 well, and I am saying we went through
22 all of that the last time. You mentioned
23 the fact that Mr. Ross was
24 flabbergasted, that proved that we went
25 through them and I am saying you have

1 been given ample time to go through what
2 you have to present and what we are
3 saying, if you have additional
4 information to present on new matters
5 which you were continuing in your
6 witness statement, let us continue on
7 your witness statement because going
8 back and lifting up that document and
9 talking about that document is not
10 bringing anything new to the Commission,
11 it is all recorded here from the last
12 time.

13 A I was that Ray Charles, no disrespect
14 for the late gentleman's ability to
15 know, not just that we looked at it. I
16 want the world to know what is going on.
17 COMM. BOGLE: DEBTOR you want to continue or you

18 don't want to continue? If you are
19 going to keep going over and over then
20 we are going to call this sitting to an
21 end. I said we have dealt with that, it
22 is in the records, if you have new
23 information that you are going on to
24 please do so but we will not sit here and
 go back over what we went through

1 before. Tax payers are paying for us to
2 be here and there are a lot of people
3 who are talking about the cost of the
4 Commission, let us try and move on.

5 A Let us try and give them the
6 information.

7 COMM BOGLE: Not more than once, please move on, if
8 you have information give it, if not I
9 will adjourn this sitting.

10 A I have more information, sir.

11 MS CLARKE: Mr. Chairman, if I am to be of any
12 continued assistance to this witness,
13 perhaps, I would want to indicate to him
14 that we are just about to read Paragraph
15 67 of his witness statement.

16 COMM. BOGLE: Yes, please proceed on that basis.

17 MS CLARKE: Paragraph 67 DEBTOR.

18 A Yes ma'am.

19 Q Could you just read for us?

20 A In September, 1996 EMB filed judgment
21 papers supported by an Affidavit of
22 Debt, (A DEBTOR 27) asserting that since
23 the filing of the claim nothing had been
24 paid on account of the debt and that the
25 full amount of the disbursed funds plus

1 interest subsisted. The judgment was
2 not entered. The matter eventually went
3 to trial.

4 A Sorry, I believe Mr. Chairman, as you
5 can see from the reading that 27 appears
6 two times. The data is really marked 28
7 and perhaps ought properly to have been
8 so marked, I am not certain now that --
9 this perhaps may throw out the numbering
10 somewhat, the exhibits are correctly
11 numbered, but the reference here is
12 wrong, in the sense that 27 is itemized
13 twice, two different documents. The
14 Affidavit of Debt to which this witness
15 referred is really A DEBTOR 28.

16 COMM. BOGLE:
17 MS CLARKE:

The affidavit?
Yes. Is there a comment you were making

18 in relation to this document DEBTOR?

19 A Well, this is part of the pleading of
20 FINSAC and this Affidavit of Debt was
21 filed after the \$x million we just dealt
22 with was paid and this in effect says
23 that \$x million was not paid. It also
24 says that since the debt was incurred
25 nothing was paid. And I don't know if

1 time of the trial?

2 A Yes, in the affidavit after AS 29 it now

3 admits what it denied in the previous

4 one, that the proceeds of the real

5 estate were received but again only in

6 part and not in full, but they now admit

7 and it is the trend that I am trying to

8 get across to the Commission so that

9 they can see what is taking place.

10 Q So you want to read paragraphs 68 and

11 69?

12 A Of the?

13 Q Your witness statement.

14 Corrected

15 DEBTOR: You said 60?

16 MS CLARKE: 68, 69.

17 A: On or about...

18 Q: I am sorry 68 through to the end.

19 A: On or about May 2002 an affidavit

20 attested by Kipcho West "AS 28" was

21 filed in response to our application to

22 have the claim struck out for want of

23 Prosecution and to have the counterclaim

24 heard. In this affidavit: It was

25 admitted that the proceeds of the sale

1 of real estate was received my Eagle
2 but that the amount was only received by
3 EMB against the debt and it was applied
4 to interest.

5 We filed an Amended Defence and
6 Counterclaim in July 2002 and Eagle
7 Merchant Bank filed a reply "AS 30"
8 which essentially maintained that
9 assertions made in the Statement of
10 Claim and other documents filed on its
11 behalf.

12 FINSAC continued the suit by Eagle
13 Merchant Bank despite the overwhelming
14 evidence that Eagle Merchant Bank had
15 issued a Memorandum of Complete
16 Satisfaction, mortgage discharge
17 documents and statement showing nil
18 balances on the capital goods account
19 and the raw materials account which all
20 show that the debt has been settled.

21 Also in light of the documentary data,
22 the sustained assertions that nothing
23 had been paid on account of the debt was
24 wrong.

25 Mr. Martin Gooden in a witness Statement

1 filed in 2007 eventually accepted that
2 amounts had been paid. These sums have
3 however not been accounted for in the
4 court's assessment of our indebtedness.

5 Q: Mr. Chairman, I would just like to pause
6 to officially mark the exhibit that has
7 been mentioned from paragraph 68 to the
8 end. And I think that affidavit of
9 Kipcho West is properly - I think it has
10 been so marked "AS 29" in the affidavit
11 and that affidavit that I think the
12 witness is saying that this was an
13 acknowledgment that proceeds of sale of
14 certain properties have been applied
15 against the debt. Paragraph 69 the
16 pleadings are actually disclosed that
17 were filed in court and having regard to
18 the pursuing discussions I just ask that
19 the Amended Defence and counterclaim and
20 the reply were actually pleadings
21 properly so called filed in the related
22 judicial proceedings. There is a
23 mention of a witness statement of
24 paragraph 7 and paragraph 73 and I
25 believe I can safely say that this is

1 the witness statement that the witness
2 has been referred to before actually
3 getting there, but it has not been
4 marked as an exhibit, the witness
5 statement of Martin Gooden which has
6 been circulated to the Commissioners,
7 the Legal Adviser and my friends and I
8 wonder whether Mr. Chairman, you would
9 wish to mark it at this stage insofar as
10 it is mentioned in the witness
11 statement. And I would want, with your
12 leave, to ask the witness to point out
13 the particular portion where he says the
14 witness eventually accepted that the
15 amount has been paid and that is where I
16 would want to leave it Mr. Chairman.

17 COMM. BOGLE: Okay, go ahead. We will mark this "AS
18 32".

19 MS CLARKE: I just want to ask the witness, if you
20 would allow me, DEBTOR, just give me
21 a second please.

22 A: The witness statement, could I have a
23 copy of the witness statement of Martin
24 Gooden.

25 COMM. BOGLE: Was this particular matter appealed?

1 MS CLARKE: The matter is in fact unappealed. The
2 subject matter of the Notice of the
3 Grounds of Appeal have been filed. My
4 understanding is that, that appeal is
5 still pending.

6 COMM. BOGLE: My legal adviser is saying I should not
7 go any further on that.

8 MS CLARKE: Very well, sir. I accept the ruling and
9 I fully appreciate it. Insofar as the
10 witness statement discloses, this - I am
11 speaking deliberately cautiously, Mr.
12 Chairman, seems to be the evidence of
13 this witness before the Commission. I
14 don't know if you Mr. Chairman, or the
15 other Commissioner, Mr. Ross, may have
16 any questions of this witness. But I
17 believe this is his evidence certainly
18 as represented on the written Statement.

19 COMM. ROSS: DEBTOR, am I correct in understanding
20 that your complaint regarding DEBTOR
21 COMPANY#1 and Eagle Merchant Bank is that
22 you arrived at; your debt with the
23 company, you arrived at what you call a
24 settlement...

25 A: Not a settlement, we paid off the debt.

1 COMM. ROSS: Let me finish the question. You arrived
2 at a settlement, property was sold,
3 proceeds went to the bank and your
4 understanding was that you retired your
5 obligation to that institution?

6 However, subsequently the debt was
7 pursued and the matter is now in court?

8 A: That is partially so.

9 COMM. ROSS: Well, if it is not so, could you flesh
10 it out for us please?

11 A: We paid the debt that was incurred. We
12 paid it prematurely because Eagle
13 changed the interest rates and matters
14 like that. If we had gone through the
15 agreement and the Letter of Commitment
16 you would have seen the details there of
17 what we agreed to and the securities that
18 were offered, and that it was a five-and-
19 half year loan for the capital goods. We
20 paid it off in less than two years because
21 the interest rates began to creep up and
22 we paid it off. When we paid it off Eagle
23 Merchant Bank, the officers at Eagle
24 Merchant Bank - because when it came to
 the Chairman of

1 the Bank the Chairman reversed all that
2 and gave us the Memorandum of Complete
3 Satisfaction. What was happening before
4 was happening from the officers of the
5 Bank, they said that the loan was not
6 paid, nothing was paid. The essence of it
7 is that they took the Agreement as at
8 January 1990 and they made an entry for
9 that Agreement which would have been a
10 Memorandum entry, but when the
11 disbursement took place, as you see in
12 the witness statement, if you had looked
13 at it, they agreed with us that it was a
14 line of credit and it is not when the
15 agreement was signed that a liability was
16 incurred but it was when the actual
17 disbursement, when the money was paid
18 against the line of credit. So we have
19 before us a Memorandum Account which was
20 entered when the documents were signed
21 and we have the disbursements based on
22 the payment of letters of credit et
23 cetera. They ignored the payment against
24 the Invoices and all of that and the
25 payments against those and then what

1 was brought to court in the Statement
2 of Claim dated the 9th of February was
3 the \$xM and say this is the debt
4 and they charged interest on it at their
5 current rate. I have evidence here to
6 show you that we had correspondence from
7 Eagle Merchant bank showing that the
8 interest rate was 24 percent then moved
9 up to the 28%, then it moved up to
10 34 percent and it was when it was moved
11 to 34%, we decided that we were going to
12 pay it off because it was creeping up
13 and we said we were going to pay it off
14 and they said no, we don't accept that
15 we are going back to February when the
16 Agreement was signed. And that was what
17 went to court.

18 COMM. ROSS: One other question, DEBTOR. Do you
19 have anything to show us of the
20 statement or copy of the statement of
21 the loan account showing zero balances?

22 A: Yes.

23 Q: Did you get any statement for the
24 overall period of the loan showing
25 disbursements, payments, et cetera?

1 propose a refinancing of the project
2 because this was an IFC matter, the
3 World Bank project which was supported
4 by the CEC and USA. It was a very
5 important export driven programme. He
6 said that he would refinance the thing,
7 but we would have to pay. Instead of the
8 preferential rate of 24 percent and 28 we
9 would have to pay 50 and
10 55 percent and I decided that I wanted
11 out of that. I decided that we would sell
12 a piece of the real estate that formed a
13 part of the collateral, we would sell it
14 and the proceeds would go to Eagle
15 Merchant Bank. They would discontinue
16 this law suit and I would be able to get
17 on with my business. At that time I knew
18 that court takes a long time and costs a
19 lot, but I had no idea that the matter
20 would be 20 years in court, and can't
21 even be discussed in a Commission of
22 Enquiry seeking for the truth because it
23 is still in court twenty years after. I
24 decided that I would sell the real estate
25 and that was

1 two separate situations, one was with
2 Century in which case you had overpaid
3 and that they owed you \$xxxK and then the
4 other situation with Eagle Merchant Bank
5 where the amount was paid out, mortgage
6 was fully satisfied, you say, and
7 however, FINSAC still went back and said
8 it was not fully satisfied and the matter
9 went to court. Those were the two main
10 situations that you have. Mr. Chairman
11 A: with respect, you haven't got it right.
12 I haven't?
13 COMM. BOGLE: No. The \$xxxK was what was on my current
14 A: account.
15 Yes, I know that.
16 COMM. BOGLE: There was another \$xxxK that was paid
17 A: off and...
18 It was paid off, but I am simply saying
19 COMM. BOGLE: that you have two different issues.
20 No, I am talking about the same Century
21 A: that was paid off.
22 The situation with two different banks.
23 COMM. BOGLE: With Century there was the amount....
24 A: The demand loan, that's what I am
25 COMM. BOGLE: saying.

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A:

COMM. BOGLE:

Yes, sir, and the Demand Loan was paid off and I have presented you with all the paid cheques.

A:

COMM. BOGLE:

Yes, we have those.
The two of them together Century owe us \$x Million and that is the case of Century that the evidence that exists there, but Errol Campbell, a McBride from Jamaican Redevelopment Foundation gave an affidavit and this, you can't use this sub judice rule because this one is an interlocutory matter, going by your rules. Errol Campbell of Jamaican Redevelopment Foundation...

A:

COMM. BOGLE:

I think you should get that corrected.
Errol Campbell Jamaican Redevelopment...

A:

COMM. BOGLE:

MS CLARKE:

I think he maybe at FINSAC.
No, the affidavit he signed says that - I have the Affidavit he signed here. Anyway as I said, we have gotten your submission and all of those matters... Mr. Chairman, I am sorry to interrupt you. There are some documents that have been put in my hand purportedly coming

1 through this witness. I had begun my
2 submission today by purporting to permit
3 the witness to refer to some documents
4 relative to the first part of his
5 complaint. I don't want to be
6 inefficient in any way in not putting
7 what has been put before me. There are
8 some debit advices and some copies of
9 some canceled cheques re Century
10 National Bank Limited, I am not sure
11 whether these have been circulated?

12 COMM. BOGLE: I think what happened Miss Clarke, the
13 debit advice and the cancelled cheques
14 we had before. However, this information
15 represents these documents here to
16 facilitate the back of the cheques.

17 MS CLARKE: Very well, sir. Those are now at hand
18 and we just want for the record to
19 reflect that.

20 COMM. BOGLE: We will accept this on the face of it
21 because the back of the cheques does not
22 in anyway indicate that he had to pay
23 for these cheques.

24 A: We have the original cheques, we just
25 copied it from the original cheques.

1 before them and yet filed affidavit
2 sworn statement to the court denying all
3 these; that is the heart of my
4 complaint.

5 COMM. BOGLE: Okay DEBTOR, I am sure we got the
6 heart of your complaint.

7 On that note we will adjourn for lunch
8 and we will return at 2:00 o'clock. I
9 ask that we adjourn until 2:00.

10 A: Mr. Chairman, that applies to me?

11 COMM. BOGLE: Yes, you will return at 2:00 o'clock.

12 A: Okay thank you.

13 LUNCHEON BREAK -11:45 A.M.

14

15 COMM. BOGLE: Ladies and gentlemen, this Enquiry is
16 now reconvened. DEBTOR.

17 (Witness called)

18 DEBTOR, let me remind you that you
19 are still under oath.

20 DEBTOR: Yes, sir.

21 COMM. BOGLE: We are now going into any
22 cross-examination that any of the
23 attorneys might have.

24 MRS. PHILLIPS: Mr. Chairman, I just wish to bring to
25 the Commission' attention that at the

1 end of the last occasion I submitted
2 the extract from the Bills of Exchange
3 Act that deals with the definition of
4 Promissory Notes. The question had
5 arisen during the examination-in-chief.
6 I specifically draw your attention to
7 section 83 subsection one which states
8 that:

9 A Promissory Note is an unconditional
10 promise in writing made by one person to
11 another, signed by the maker, engaging
12 to pay, on demand or at a fixed or
13 determinable future time, a sum certain
14 in money, to or to the order of a
15 specified person or to bearer.

16 That fact that it is an instrument
17 defined in the Bills of Exchange Act, I
18 think you can accept that it is by
19 definition a bill of exchange.

20 Good afternoon DEBTOR.

21 A: Afternoon, ma'am.

22 Q: I just want to be sure that I am
23 following you correctly. My
24 understanding is that in 1988 or
25 thereabouts, you borrowed \$x million

1 dollars from Century national bank.
2 x million dollars - x million
3 dollars with
4 interest.
5 A: That is not correct. if I could explain.
6 Q: Just a moment. You are correct,
7 DEBTOR COMPANY#3 borrowed x million
8 dollars.
9 A: That is not correct.
10 Q: Alright. Maybe you can explain it to
11 your attorney.
12 A: I don't have an attorney.
13 Q: You can explain it when you are being
14 re-examined.
15 You did see the certificate of title for
16 xxxxxxxx?
17 A: Yes.
18 Q: And xxxxxxxx?
19 A: Yes.
20 Q: And I believe it was you who drew the
21 Commission's attention to the
22 endorsement of mortgages on those
23 titles, one of which was Mortgage
24 #xxxxxxx, stamped to cover x million
25 dollars with

1 interest? You recall doing that?

2 A: Stamped to cover \$xxx

3 thousand demand loan and \$xxx

4 thousand overdraft. So

5 that wasn't a total loan of \$x M it

6 was to cover overdraft facility and

7 demand loan. Only the demand loan for

8 \$xxx thousand was

9 disbursed, the overdraft facility was to

10 allow...

11 Q: We will come to that. You said in your

12 statement at numbered paragraph 8 that

13 DEBTOR COMPANY#3 title was used to cover

14 facilities totaling x million

15 dollars. Isn't that

16 what your statement said?

17 A: Yes, the two amounts.

18 Q: So the total was x million

19 dollars?

20 A: That is the amount c.

21 COMM. BOGLE: May I just interject here. At paragraph

22 8 there was an amendment to paragraph 8

23 In actual fact facilities totaling \$x

24 million was corrected to

25 be \$x million.

1

2 MRS. PHILLIPS: Yes, Commissioner, but that was taking
3 into account paragraph 7 where there was
4 an overdraft of \$xxx
5 thousand and an additional request of
6 \$xxx K making a total of \$xxx
7 thousand which when
8 added to the \$x M
9 produced....

10 COMM. BOGLE: I am simply saying that you quoted 8 at
11 \$x M but there was
12 a correction to that. So I am saying
13 the \$x M in
14 paragraph 8 no longer obtains, that
15 there was a correction to that. So I am
16 saying the \$x M
17 in paragraph 8 no longer obtains because
18 that was corrected to read
19 \$x M.

20 MRS. PHILLIPS: Perhaps I can be clearer because it is
21 as at the end of December, 1990, but I
22 don't want us to feel that it is one
23 facility for one bank.

24 COMM. BOGLE: I am just simply saying it was
25 corrected.

1 MRS. PHILLIPS: Yes, okay. I am obliged. It was so
2 corrected but I am trying to deal with
3 how we got there. So we had this
4 facility for \$x M
5 and then according to
6 you, you applied for - when I say you, T
7 mean DEBTOR CO.
8 A: Yes, I understand.
9 Q: Let me be specific; DEBTOR COMPANY#4.
10
11 A: Yes.
12 Q: Applied for an extension of its
13 overdraft facility with Century National
14 Bank to extend the \$xxx
15 thousand dollars already in overdraft by
16 a further \$xxx K; correct?
17 A: To \$xxx thousand, yes.
18 Q: So at the...
19 A: To cover an overdraft facility.
20 Q: So as at the end of December the total
21 then was X million dollars,
22 principal.
23 A: \$xxx thousand for
24 overdraft facility and \$xxx
25 thousand for demand loan.

1 Q: Now DEBTOR, a part of the payment to
2 Eagle Merchant Bank on account of the
3 debt owed by DEBTOR COMPANY#1, emanated
4 from Century National Bank.

5 A: Yes, the first part of the loan.

6 Q: And the amount of that payment was
7 \$xxx thousand
8 dollars?

9 A: That is one payment, yes.

10 Q: And that payment was sent by way of a
11 Century National Bank manager's cheque
12 to Eagle Merchant Bank?

13 A: Yes.

14 Q: On February 26, 1991, on or about
15 February 26, 1991?

16 A: Yes.

17 Q: Now that manager's cheque of
18 \$xxx thousand that
19 was drawn on Century National Bank's
20 account and handed over to Eagle
21 Merchant Bank, that cheque was charged
22 against DEBTOR COMPANY#4 current account
23 with Century National Bank.

24 A: Yes.

25 Q: And that current account was already in

1 over draft at the time; correct?

2 A: Yes.

3 Q: So this payment put it further into
4 overdraft?

5 A: There were deposits and there were
6 payments.

7 Q: Did you hear my question?

8 A: There were deposits and there were
9 payments so...

10 Q: My question was, did this payment put it
11 further into overdraft?

12 A: Put what?

13 Q: Put the account of DEBTOR COMPANY#4
14 with Century National
15 Bank further into overdraft?

16 A: It would only be put in overdraft
17 further - emphasizing `further' - if the
18 amount you lodge and what you draw, the
19 amount you lodged was less than the
20 amount that you drew the cheque for. if
21 the amount you lodge is more than you
22 draw the cheque for then it wouldn't put
23 it further into overdraft, the net affect
24 would be less, the overdraft would be
less.

1 Q: And in that instance weren't the cheques
2 and other debits on that account way in
3 excess of the deposits and credits on
4 that account?

5 A: I don't have it before me but we have
6 the current account available so we know
7 what it overdraft was from time to time.

8 Q: Okay. So would you look at exhibit 18A
9 let us see if we can be a little bit
10 more specific.

11 A: You are talking about my witness
12 statement?

13 Q: Yes I am.

14 A: Could you let me know what paragraph you
15 are referring to?

16 Q: I am referring to exhibit 18A.

17 MS. CLARKE: For the benefit of the Commission and
18 the witness, that is not in fact
19 included in the compiled witness
20 statement, it was actually put in as a
21 document to which exhibit 18 is also
22 attached which is probably why the
23 witness will not be able to find it in
24 his actual witness statement. 18A is
25 attached to a document, a letter dated

1 February 26, 1991 which is in fact 18
2 and in the witness statement but it was
3 passed up separately now with 18A
4 attached which is the statement. It is
5 not going to be found in the compiled
6 witness statement.

7 A: I am at 18, and could you assist me.

8 COMM. BOGLE: DEBTOR, it is a loose leaf or one
9 attached to a letter.

10 A: I haven't got that.

11 MS. CLARKE: Sorry, may I allowed to show it to him.

12 (Document given to witness)

13 A: Yes.

14 MRS. PHILLIPS: You have it now?

15 A: Yes ma'am.

16 Q: Okay. This is the bank statement of
17 DEBTOR COMPANY#4 with
18 Century National Bank?

19 A: Yes.

20 Q: And this statement goes up to the end of
21 February, 1991?

22 A: Yes.

23 Q: Now, you see where it says statement at
24 the top third and there is a line going
25 across the top? You see immediately

1 below that the words 'Business
2 Checking'.
3 A: You are looking at the statement for
4 February?
5 Q: Yes. You see where the word statement
6 is in bold at the top third?
7 A: The top third.
8 Q: Do you see where the words statement is
9 in bold just by itself? DEBTOR?
10 A: Yes, oh yes.
11 Q: You are with me now?
12 A: Yes, ma'am.
13 Q: Good. Do you see immediately under that
14 the words 'Business checking'? Do you
15 see immediately under that the words
16 'Business Checking?
17 A: Yes.
18 Q: Z take if from that, that this is a
19 business chequing account?
20 A: It is.
21 Q: Okay. And right under that you see your
22 previous balance on January 31, 1991
23 \$xxx thousand
24 dollars
25 overdrawn?

1 A: Yes.

2 Q: Plus deposits and other credits,
3 \$xx thousand?

4 A: Yes.

5 Q: That is the total deposits for the
6 month?

7 A: Yes.

8 Q: Minus cheques and other debits xxx
9 thousand dollars.
10 Yes.
11 Equals your new balance, \$x million. I

12 A: can read out the exact figure. \$x

13 Q: million.
14 Yes.
15 So you agree with me that DEBTOR

16 A: COMPANY#4 was carrying an overdraft in
17 Q: excess of the agreed overdraft of the
18 xxx thousand dollars?
19 No.
20 Look half way down the page and along
21 the extreme right hand side where it

22 A: says balances. Do you see minus signs?

23 Q:
24
25

1

2 A: Yes.

3 Q: Just listen to my question. Do you see
4 minus signs beside each and every litem
5 there?

6 A: Which suggests that it's the overdraft
7 figure.

8 Q: I didn't ask you what it suggests, I
9 just ask you if you see them.

10 A: Yes I see them.

11 Q: Now...

12 A: But you were asking whether that was
13 over the limit.

14 Q: Just a minute, DEBTOR, just than
15 answer the question.

16 A: I would like to answer the question
17 properly.

18 Q: You have answered the question properly.
19 I asked you if you saw the minus signs
20 and you said yes.

21 A: You asked if I was over the limit and
22 this does not mean, this February, 1991.
23 The limit for which I offered guarantee
24 was in December, 1990, more than a year
25 before and the limit keeps changing and

1 not all the limits that you have is
2 registered against the title.

3 Q: Did you speak about your increased
4 overdraft limits in your statement or
5 did you just speak about the overdraft
6 of xxx thousand?

7 A: I spoke about the overdraft which was
8 registered on the title because that is
9 the relevant one. This DEBTOR COMPANY#4
10 has nothing to do with the
11 title; the title is DEBTOR COMPANY#3.

12 Q: Fine. Let's just see if you can deal
13 with my questions. Now you remember
14 that Neville Robinson & Associates
15 Auditor's Report that you put before the
16 Commissioners?

17 A: Yes.

18 Q: And you remember that you had several
19 bank statement annexed to it?

20 A: Yes.

21 Q: Can you find your copy?

22 A: Yes.

23 Q: Okay, now in those bank statements, a
24 number of them on the copy that I have
25 been given, the extreme right hand side

1 of the page trimmed so closely that you
2 cannot even see the last digit of the
3 figure. Is that the same with yours?
4 A: No, I can see them perfectly.
5 Q: Look at the statement for example April
6 30, 1992.
7 A: Oh yes there is a blur on the cents.
8 You are concerned about the cents?
9 Q: I am very concerned even about what
10 comes beside the cents. You agree with
11 me that you can't see the cents on that
12 copy?
13 A: The c-e-n-t-s, yes.
14 Q: Let's look at the one dated December 31,
15 1991 which is also cropped closely but
16 fortunately not quite as closely as that
17 one is cropped.
18 A: December 31?
19 Q: 1991.
20 A: I am missing that one it seems.
21 MRS. PHILLIPS: Commissioners, do you have that one?
22 COMM. BOGLE: Yes.
23 Q: Do you see in the balances column at the
24 bottom, what looks like a dot beside
25 each number? I am suggesting to

1 DEBTOR that, that is in fact at minus
2 sign as in the one in exhibit 18A beside
3 each number.

4 MS. CLARKE: Mr. Chairman, I have an objection to the
5 suggestion before it is even put. Is
6 the submission or the suggestion based
7 on Counsel's perception looking at the
8 document or based on evidence that has
9 gone before? Is Counsel suggesting that
10 as far as she can see it looks like or
11 is it that based on data that she has
12 **produced** she is in a position to say

13 that this is a minus sign because I
14 think Counsel has inasmuch as said that
15 it is quite imperceptible as to what it
16 is so the basis of her submission should
17 at least be put; or suggestion I should
18 say. I am sorry.

19 MRS. PHILLIPS: I have **referenced** 18A before which shows
20 the format **where** there is as negative
21 balance. When you look at **figures** that
22 are not in negative balance, you don't
23 see any mark of any kind beside them
24 whatsoever.

25 A: Counsel is correct. In December 1990

1 there was a negative balance.

2 Q: Good. Thank you DEBTOR. So where
3 the side of the statement is cut off to
4 the point where we cannot see the cents
5 we are hamstrung in our ability to
6 construe the statement.

7 A: Oh, you are saying the minuses to that
8 end that is cut off?

9 COMM. BOGLE: I think though, if we do the Maths.

10 MRS. PHILLIPS: If you do the Maths at the top, yes. But
11 if you go to Schedule 3, bearing in mind
12 that you were almost x
13 million overdrawn in February of 1991,
14 and you have said helpfully, that your
15 overdraft was increased after
16 December, 1990 beyond the xxx
17 thousand limit in December.

18 A: I don't think you are understanding what
19 is there at all. The overdraft was
20 increased to xxx
21 thousand by the end of December, 1990.
22 xxx thousand
23 dollars that was from 1988 and another
24 xxx thousand in
25 1990 making a total xxx

1 thousand overdraft up to December,
2 1990.

3 Q: I am understanding you, but the xxx K
4 was covered by the initial
5 mortgage of the x million...

6 A: No, no, and that is very fallacious
7 where you keep talking about a mortgage
8 of x million and you are talking about
9 overdraft facility and demand loan.

10 MRS. PHILLIPS: Just a minute! Stop right there because
11 I have an allergic reaction to that word
12 **fallacious** when its used in relation to
13 me.
14 Would you look at exhibit AS1(a).

15 A: Exhibit what?

16 Q: AS(1) (a). It is the Certificate of
17 Title.

18 A: 1A is not the Certificate of Title.

19 Q: I am not asking you DEBTOR, AS 1A is
20 the Certificate of Title. That's not a
21 question.

22 MS CLARKE: The witness could be helped if he were
23 to be told that it's not a statement
24 contained in the witness statement. What
25 he was handed is AS 1, this is a

1 document that is supplied by Counsel
2 presently cross-examining the witness
3 and it was marked during the course of
4 the testimony. So it would be a loose
5 document in the form of a copy entitled,
6 marked AS 1A which I am not sure that
7 the witness would have retained for
8 himself because it was actually provided
9 by Counsel for JRF. So perhaps rather
10 than arguing with him he could be helped
11 to know that.

12 MRS. PHILLIPS: Well, you better look at yours since I
13 have provided that to this Commission.

14 COMM BOGLE: DEBTOR, there is a document that was
15 submitted, it's not attached to your
16 submission and it's the Certificate of
17 Title for volume xxxx and xxx.

18 A: Yes, I have that.

19 Q: You have that?

20 A: Yes.

21 COMM BOGLE: Right. That is the one that...?

MRS PHILLIPS: All right, DEBTOR, could you look at
23 the last page of that title.

24 A: Yes, I am looking at the last page.

25 COMM BOGLE: We are being asked for just a few

1 minutes because the system has to be
2 rebooted, the system. So we will just
3 take a five minute break.

4 (Break)
5 COMM BOGLE: Okay, we are back. We have reconvened.

6 MRS. PHILLIPS: Thank you, Commissioner. The last page
7 of the title, DEBTOR.

8 A: Yes.

9 Q: Second endorsement from the top.

10 A: Yes.

11 Q: Mortgage #xxxxxx registered 30th of
12 November 1988 to Century National Bank
13 Limited, 14-20 Port Royal Street,
14 Kingston. You see where the money is
15 mentioned in the mortgage to cover
16 xmillion with interest and another,

17 Volume xxxx Folio xxx. Now look at
18 paragraph 8 of your Witness Statement.

19 A: Ugh-huh.

20 Q: And you will agree with me that it says:

21 **"At the end of December, 1990 DEBTOR**
22 **COMPANY#3 title was used to cover**
23 **facilities totaling \$x million, being**
24 **for the demand loan and \$xxx K for**
25 **overdraft facilities".**

1 A: Yes.

2 MS CLARKE: Sorry, I believe my friend is reading
3 without the amendment.

4 Q: And it was amended to total x M. But
5 my statement to you was that the
6 original overdraft amount was covered by
7 the mortgage.

8 A: The...

9 Q: That's the statement that you called
10 fallacious?

11 A: Yes. The fallacy...

12 Q: Do you agree that the original overdraft
13 amount was covered by the mortgage?

14 A: The amount covered by the mortgage was a
15 mix of overdraft facility and demand
16 loan.

17 Q: Yes, and the part of it that was
18 overdraft facility was covered by the
19 mortgage?

20 A: Both were covered by the mortgage.

21 Q: The part that was the overdraft facility
22 was covered by the mortgage, correct?

23 A: Yes.

24 Q: So my statement is not fallacious.

25 A: The fallacy in your statement is...

1 Q: Now, DEBTOR moving on.

2 A: You don't want to hear me?

3 MS CLARKE: I believe if something is put to the
4 witness he ought to be afforded the
5 opportunity to respond.

6 A: ...is that the statement is saying that
7 the bank disbursed \$x M when the
8 bank disbursed \$xxx K and we covered
9 an overdraft facility for xxx K. So
10 unless there is an overdraft to that
11 amount or more to say that the bank
12 disbursed xxx K is not only
13 fallacious, you know that it is false.
14 False. The Commissioners have read it
15 and we need go over it no more because
16 they get it. How come you don't get it?

17 MRS. PHILLIPS: I don't know, the court and I seem to
18 have the same problem.

19 A: Yes, because you see, I also go before
20 the court.

21 COMM BOGLE: Let's see if we can get some order.
22 Question and answer, please.

23 MRS. PHILLIPS: DEBTOR, so you had the x M
24 facility and then you had an additional
25 xxx K?

1 A: Yes, ma'am.

2 Q: But that was not the limit of your
3 indebtedness in the principal sense to
4 Century National Bank. Subsequent to
5 that there was the xxx K that was
6 applied against DEBTOR COMPANY#3 current
7 account in order to make the payment to
8 Eagle Merchant Bank in 1991, am I not
9 correct?

10 A: That has nothing to do with DEBTOR
11 COMPANY#4 using a facility that is
12 afforded the bank.

13 Q: Do you agree an overdraft is a debt?

14 MS CLARKE: I am sorry, I am at a lost here. The
15 witness was in the middle of answering
16 something. Is the witness being asked
17 something different?

18 MRS. PHILLIPS: The witness is not in
19 examination-in-chief Commissioner, the
20 witness is being cross-examined. I asked
21 a specific question. If my friend
22 wishes to add anything she is free at
23 re-examination.

24 COMM BOGLE: There is an objection, may we hear the
25 objection, please.

1 MS CLARKE: Thank you Mr. Chairman. I believe it
2 was of no moment when one considers
3 whether a witness ought to be afforded
4 the opportunity to complete his answer,
5 whether he is being examined in-chief or
6 he is cross-examined. The witness is in
7 the middle of responding to a question,
8 Counsel in the meantime is putting
9 another question. I am would simply ask
10 you, Mr. Chairman that the witness be
11 allowed to complete his answer to the
12 one question before the other question
13 is put, thank you.

14 MRS. PHILLIPS: My response to that Mr. Chairman, is
15 that I have asked a specific question
16 and it has been answered. To the extent
17 that the witness wishes to say things
18 which are irrelevant to the question
19 that I have asked. If the counsel
20 marshaling the evidence wishes to
21 extract that in re-examination she is
22 free to do that is the purpose of it.
23 But cross-examination is to test credit
24 and to elicit facts which have been
25 omitted. It is not at large. it is at

1 large in the sense that I can ask what I
2 want to ask but he has to answer the
3 question that I ask him. It's not an
4 invitation for him to give a speech
5 every time I ask a question or else we
6 won't leave here today.

7 COMM BOGLE: Proceed, Mrs. Phillips.

8 MRS PHILLIPS: Thank you. Yes DEBTOR, do you
9 consider an overdraft to be a loan?

10 A: No.

11 Q: Well, I think we have come a long way in
12 finding out what is the difficulty that
13 this gentleman has, that answer alone.

14 MS CLARKE: Is Counsel asking questions now in
15 relation to this issue? To whom is
16 Counsel speaking just now? Is Counsel
17 submitting as he goes along relative to
18 each answer?

19 A: Because she asked a nonsensical question
20 and then moved on to comment on it.

21 COMM BOGLE: DEBTOR, comments are not necessary
22 please. The questions are asked and you
23 do your best to answer the questions as
24 directly as possible so that we can move
25 on.

1 MS CLARKE: In fairness to the witness you know,
2 Mr. Chairman, perhaps the alike statement
3 may be directed to Counsel because
4 cross-examination, is that what it says,
5 examination of the witness?

6 COMM BOGLE: Can you direct your statements to me?

7 MS CLARKE: Obligated, sir. The witness is being
8 questioned.

9 MRS PHILLIPS: Now DEBTOR, did you put in evidence
10 AS12, a Fixed Date Claim Form with
11 DEBTOR COMPANY#3 as the claimant?

12 A: Exhibit who?

13 Q: AS 12?

14 A: Yes.

15 Q: With DEBTOR COMPANY#3 as the claimant;
16 Financial Institution Services Limited
17 as first defendant, Jamaica
18 Redevelopment Foundation as the second
19 defendant and Dennis Joslin Inc as the
20 third defendant. You have also put in an
21 affidavit in support of the Fixed Date
22 Claim Form which is about three pages
23 behind that document?

24 A: Yes.

25 Q: And don't you see there are references

1 in the Affidavit to Exhibits AS1; AS2;
2 AS3 and AS4?
3 A: AS1, 2, 3, 4.
4 Q: You see those references in the
5 Affidavit?
6 A: Yes.
7 Q: Wouldn't you agree with me that there is
8 no exhibit attached to the Affidavit,
9 correct?
10 A: To this...
11 Q: This is the copy that you have put
12 before the Commission. Wouldn't you
13 agree with me that there is no exhibit
14 attached to it?
15 A: I don't know if it's not attached here
16 or it wasn't attached, this is the
17 filing.
18 Q: DEBTOR, the Affidavit that is here
19 that you put before the Commission, do
20 you agree with me that it is devoid of
21 the exhibit to which it refers?
22 A: It is not here.
23 Q: Thank you. Good. We are getting
24 somewhere.
25 A: z am glad you know.

1 Q: Now DEBTOR, the payment to Eagle -
2 the company, DEBTOR COMPANY#3 requested
3 Century National Bank to make available
4 to Eagle Merchant Bank the title for XXX
5 King Street to allow Eagle to register a
6 second mortgage behind Century's
7 mortgage?

8 A: I don't know where you are seeing that.

9 Q: I am asking you if that is not correct.

10 A: To my recollection that's not correct.

11 Q: Okay, let me see if I can assist your
12 recollection. Could you have a look at
13 that letter for me please, DEBTOR, it
14 is a letter dated November 14, 1991 from
15 DEBTOR COMPANY#3 to Manager,
16 Century National Limited, is that your
17 signature?

18 *(Document handed to witness)*

19 A: Yes.

20 Q: Do you now accept that on November 14,
21 1990 DEBTOR COMPANY#3 requested Century

22 National Bank Limited to loan the title
23 for xxx King Street, to the Eagle
24 Commercial Bank for them to register the
25 second mortgage on the title?

1 A: Yes, that was later revoked.

2 Q: Do you now accept...

3 A: That it was done at that time, yes.

4 Q: DEBTOR, do you now accept that, that

5 is so?

6 A: (No answer)

7 Q: Yes or no?

8 A: That it was done at a time.

9 Q: May we mark this as AS wwhat would be

10 the next one?

11 COMM BOGLE: Thirty-two.

12 MRS. PHILLIPS: Obligated.

13 Now DEBTOR, when DEBTOR COMPANY#1

14 borrowed money from Eagle Merchant Bank

15 in 1989...

16 A: DEBTOR COMPANY#1 didn't borrow any money

17 in 1989.

18 Q: My question is not finished, could you

19 just listen to my question?

20 A: But the premise of your question starts

21 with a falsehood.

22 Q: In November 1989, you accepted a

23 commitment on behalf of DEBTOR COMPANY#1

24 and DEBTOR COMPANY#2 to

25 borrow money from Eagle Merchant Bank of

1 Jamaica Ltd, did you not represent
2 to them that in the security that would
3 be provided there would be a corporate
4 guarantee given by DEBTOR CO #3
5 supported by a first legal mortgage over
6 xxx King Street and xx Love Lane?

7 A: Yes.

8 Q: Do you know what first legal mortgage
9 is?

10 A: I beg you pardon?

11 Q: Do you know what a first legal mortgage
12 is?

13 A: Yes, ma'am.

14 Q: Okay. So at the time that you gave that
15 commitment you would have been aware
16 that DEBTOR COMPANY#3 had already given
17 a first legal mortgage over that
18 property to Century National Bank?

19 A: Ugh-huh.

20 Q: Now, DEBTOR, on or about November 22,
21 1990, DEBTOR COMPANY#4
22 acting through you, authorized Century
23 National Bank to up-stamp the first
24 mortgage on the property at xxx King
25 Street before releasing the title to

1 Eagle Merchant Bank for that institution
2 to register a second mortgage on the
3 property. Is that correct?

4 A: That's a question? What is the question?

5 Q: The question is, whether on November 22
6 1990 or thereabouts DEBTOR COMPANY#4
7 through you, authorized
8 Century National Bank to up-stamp its
9 first mortgage on the property before
10 releasing it to Eagle Merchant for that
11 bank to register a second mortgage on
12 the property?

13 A: For the second bank, yes.

14 Q: And did you subsequently seek to revoke
15 your authorization? Well, sorry let me
16 put it specifically. Did DEBTOR COMPANY#3
17 subsequently seek to revoke the
18 authorization given by DEBTOR COMPANY#4?

19
20 A: Yes.

21 Q: And are you aware that Eagle Merchant
22 Bank registered a caveat on the title
23 because it could not register a first
24 legal mortgage in support of the loan
25 that it had disbursed on the commitment

1 given by you that it would be allowed
2 to do so because of Century's pre-
3 existing first legal mortgage?

4 A: I am not aware of any caveat
5 pre-existing on that basis.

6 Q: Are you aware that Eagle wanted to
7 register its mortgage as a first legal
8 mortgage and could not do so because of
9 the pre-existing first legal mortgage
10 caveat at Century National Bank?

11 A: You want me to answer what Eagle wanted
12 to do?

13 Q: No, I want you to answer if you were
14 aware that Eagle wanted to register its
15 mortgage and could not do so because of
16 the pre-existing first legal mortgage?

17 A: And if you let me answer what I am aware
18 of, that when Eagle wanted to do that
19 the debt to Eagle was already paid off
20 including the manager's cheque that you
21 are trying to -- that Eagle up to now
22 says that they did not receive that
23 manager's cheque as part of their claim.

24 Q: Is that the same debt that you told the
25 court was paid off?

1 I am answering or when she is asking,
2 I need to be guided by that.

3 COMM BOGLE: DEBTOR, as was said this morning, the
4 matter is still in front of the court
5 and we will not be going into it.

6 A: Thank you Mr. Chairman, could you make
7 sure that she hears that.

8 MRS. PHILLIPS: Oh, I heard it and I heard that the
9 finding was *res judicata* and the thing
10 was put to rest because it says, final
11 decision. And one of the findings in
12 that final decision is that the Eagle
13 Merchant Bank debt was not paid off.

14 A: And one of the...

15 Q: In fact one finding was that the debt
16 was in excess of \$x m.

17 A: Yes.

18 Q: Okay. So let us proceed on the basis of
19 what a court that heard every side
20 decided.

21 A: No, the court has not heard every side
22 and this Commission has not heard every
23 side because the Commission has denied
24 the admission of what was represented to
25 the court in making the decision. You

1 take what the court decision is but you
2 don't take the misrepresentations that
3 went to the court and how fair is that?

4 Q: Are you aware, DEBTOR, since you
5 won't answer my previous question...

6 A: I will answer any question that you ask
7 me, ma'am. That is just a question that
8 I can answer.

9 Q: Are you aware that Century National
10 Bank, Century National Bank wanted to
11 up-stamp its mortgage by an additional
12 \$xxxK to cover the debts, the
13 increase in the debts owed to it by
14 DEBTOR COMPANY#3, DEBTOR COMPANY#4
15 and DEBTOR?

16 A: Would you point me to where those debts
17 are represented?

18 Q: I had just showed you...

19 A: Could you assist me.

20 Q: I just showed you a bank statement
21 showing an overdraft of \$xM.

22 A: And that is what was represented in the
23 court?

24 Q: You don't ask the questions here, Mr.
25 DEBTOR, you just answer.

1 signed a promissory note on behalf of
2 DEBTOR COMPANY#3 evidencing a debt of \$x
3 million because that is what the
4 promissory note does, you had given the
5 bank a mortgage for \$x million which was
6 up-stamped by \$xxx K and they now
7 wanted to additionally up stamp the
8 mortgage to secure the debt that you
9 acknowledged on behalf of DEBTOR
10 COMPANY#3 in the promissory note, do you
11 agree?

12 A: That is wrong.

13 Q: Okay let us look.

14 A: And that is the essence of the
15 falsification.

16 Q: Please you like that word and I am going
17 to ask you to just use it with restraint
18 if you have to at all.

19 A: I wish I could.

20 Q: Because you see, I have read all the
21 judgments that I have been provided with
22 and the only time that I see that word
23 used is in relation to you.

24 A: Yes.

25 Q: Now, DEBTOR, let me ask you again,

1 are you aware that Century National Bank
2 was being prevented by the caveat lodged
3 by Eagle Merchant Bank against the title
4 from up stamping its mortgage by a
5 further \$xxx K to reflect the agreed
6 indebtedness of DEBTOR COMPANY#3 as
7 evidenced by the promissory note?

8 A: That is a misrepresentation of the fact.

9 Q: May we mark this AS.

10 COMM. BOGLE: 33.

11 MRS. PHILLIPS: Obligated. DEBTOR, the ISC loan which
12 was originally at 180, is that correct?

13 A: No, that is not correct.

14 Q: 24%?

15 A: Yes, that is correct.

16 Q: 24%. Okay, the Eagle Merchant
17 Facility was divided in a number of
18 loans, the ISC loan being one?

19 A: Yes.

20 Q: There was an Eagle Merchant, part of it
21 that had an interest rate of 18%, add
22 on?

23 A: Yes, add on over five years.

24 Q: The fact that you had promised a first
25 mortgage to Eagle Merchant Bank, were

1 not able to deliver that before you were
2 already given a first mortgage to
3 Century National Bank created a problem
4 between Century National Bank and Eagle
5 Merchant Bank which they tried to sort
6 out between themselves, are you aware of
7 that?

8 A: Is that your testimony?

9 Q: It a question I am asking you, if you
10 are aware that, that was the case, you
11 can say yes, I am aware or no, I am not
12 aware?

13 A: The question is based a false premise.

14 COMM. BOGLE: Is either you agree with the question or
15 don't agree with the question, she's
16 simply asking a question.

17 MRS. PHILLIPS: Let me break it down, did you promise to
18 give Eagle Merchant Bank a first
19 mortgage?

20 A: Originally, yes.

21 Q: At the time had you already given a
22 first mortgage to Century National Bank?

23 A: And Eagle knew that, Eagle knew that.

24 Q: And the evidence of that is where?

25 A: I can give you evidence of that.

1 Q: There is a commitment letter with
2 your signature on it which states that
3 you promised and the agreement with
4 Eagle, as understood by Eagle is that
5 they would get a first mortgage?

6 A: Yes, and there was a commitment by Eagle
7 that they would lend money.

8 Q: I have not seen a letter correcting
9 that, if there is one then I would...

10 A: I can provide you with evidence.

11 Q: You need to do that and provide it to
12 the Commission.

13 A: Where Eagle Merchant Bank says they were
14 aware that there is a first mortgage.

15 Q: Look at this for me DEBTOR.
16 (Document handed to DEBTOR)

17 A: What is this? (Witness reads letter)

18 Q: Do you agree that Century National Bank
19 and Eagle Merchant Bank were trying to
20 sort out the difficulties between
21 themselves in relation to you having
22 pledged the same property to them both
23 as first mortgages?

24 A: I am seeing this for the first time.

25 Q: That was not my question to you, my

1 question was whether you agree that Eagle
2 and Century were trying to resolve the
3 difficulties occasioned by your promises
4 to both of them of first legal mortgages
5 over the same property? Mr. Chairman, how
6 A:
7 do I know what Eagle and Century were
8 trying to do between themselves?
9 COMM. BOGLE: If you don't know you don't know
10 DEBTOR, if you do, you do.
11 A:
12 MRS. PHILLIPS: AS 34?
13 COMM. BOGLE: DEBTOR, the last letter here you read it,
14 have you read it.
15 A: This is what I got.
16 COMM. BOGLE: Have you read it?
17 A: I read a letter to Eagle Merchant Bank
18 from xxx.
19 COMM. BOGLE: Which is the one you have in your hand.
20 A: Yes.
21 COMM. BOGLE: I am asking you if you read it.
22 A: Yes, I read it, sir.
23 COMM. BOGLE: Mrs. Phillips.
24 MRS. PHILLIPS: Crave your indulgence.
25 A: I just wonder why am I reading it

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MS CLARKE:

because if I am supposed to say anything about what is in there?
Mr. Chairman, I think for my part I have been trying to be constraint or restraint but I feel constraint to put on record again my own view that these documents that are not documents of the witness and which have not been properly put in terms of through their makers or anybody coming to authenticate them ought at best to be approached and taken with the greatest of caution because this is a letter from Century to Eagle, the witness has not identified himself with it even in terms of having seen a copy or knowing anything about it and it is now in evidence. I am therefore saying that when the Commission comes to give weight, one way or another to this letter, this is a matter that ought to be taken into consideration in terms of authenticity, that no foundation has really been laid for these documents, this document in particular, and I have said it on a number of occasions and I

1 believe this is a time, aptly, to say it
2 again.

3 MRS. PHILLIPS: May I say, Mr. Chairman...

4 A: The figures are incorrect.

5 Q: DEBTOR please.

6 COMM. BOGLE: Your objection or statement is noted.

7 MS CLARKE: Thank you, sir.

8 MRS. PHILLIPS: May I proceed Mr. Chairman?

9 COMM. BOGLE: Yes.

10 MRS. PHILLIPS: Obliged. Now DEBTOR, you would have no
11 difficulty accepting that DEBTOR
12 COMPANY#3 was at one time represented
13 by Randolph Williams, Attorney-at-law?

14 A: Yes.

15 Q: And on behalf of DEBTOR COMPANY#3 he
16 wrote to Mr. Patrick Hylton, the Managing
17 Director of FINSAC Limited on June 10,
18 1999. You recall that, presumably you
19 would have told him to do so, you recall
20 telling Mr. Randolph Williams to write to
21 Mr. Patrick Hylton on behalf of DEBTOR
22 COMPANY#3? I don't recall but it is
23 possible.

24 Q: Okay, it is possible, I want to be fair.
25 (Letter handed to witness)

1 See if this refreshes your mind.

2 (Document handed to witness)

3 DEBTOR -- let me give you a chance to
4 read it. You read it now DEBTOR?

5 A: I read it.

6 Q: Now, first let's look at the first page,
7 numbered item two, that isn't the only
8 security that DEBTOR COMPANY#3 agreed to

let

9 Eagle Merchant Bank have, the second
10 mortgage at xxx King St? You also
11 agreed to a first mortgage at xxx King
12 St., and xx whatever lane, you did,
13 didn't you?

14 A: No, DEBTOR COMPANY#3 did own xxx King St.

15 Q: I might have gotten the number wrong.

16 COMM. BOGLE: While you search for that, we will
17 accept this as AS 35.

18 MRS. PHILLIPS: AS 35. Sorry in paragraph 2 there,
19 numbered paragraph 2, it was in fact a
20 first legal mortgage on xxx King St.,
21 and xx and xx Love Lane?

22 A: Yes.

23 Q: Which DEBTOR COMPANY#3 agreed to grant
24 Eagle Merchant Bank, yet your lawyer is
25 here saying that it agreed to grant just

1 the second mortgage on xxx King St., you
2 see that?

3 A: Yes.

4 Q: That is not correct, is it?

5 A: That is what I have been trying to say
6 that a lot of what you are saying is not
7 correct but how do I answer it in yes or
8 no.

9 Q: DEBTOR, is it not you who brought
10 this agreement with Eagle Merchant Bank
11 dated November 15, 1989 signed by you as
12 evidenced before this Commission of the
13 content of this letter?

14 A: Yes.

15 Q: Okay. This letter is at odds with this
16 letter in relation to security, agreed?

17 A; No, not at the time.

18 Q: All right, I will let the counsel
19 marshalling the evidence resolve that,
20 whatever discrepancies. Now turn
21 around, turn overleaf, you see item 7,
22 numbered item 7?

23 A: Yes.

24 Q: **The indebtedness to EMB by DEBTOR**
25 **COMPANY#1 has been satisfied and I**

1 **enclose a copy of a memorandum of**
2 **satisfaction filed by EMB. EMB has not**
3 **however registered the discharge of the**
4 **security.**

5 Isn't this the same debt that is the
6 subject of the judgment of the
7 Honourable Mr. Justice Jones?

8 A: Yes, it is the same issue.

9 Q: In which he concluded that your company
10 owes in excess of \$x million, yes?

11 A: Based on the information that was before
12 him, yes.

13 Q: Okay good, thank you. Which has not
14 been put before this Commission and as a
15 result of this, this incorrect claim
16 that the debt has been paid off, in
17 paragraph 8 then followed with the
18 allegations of negligence and breach of
19 duty by CNB, correct?

20 A: I don't understand the question.

21 Q: Paragraph 8 follows on from paragraph 7.

22 A: Yes.

23 Q: In fact numbered paragraphs 6 and 8
24 revolve around paragraph 7 but paragraph
25 7 is incorrect; as a matter of law,

1 given that we now have a judgment.

2 A: You have a judgment and you have a

3 filing of Notice of Appeal and Grounds

4 of Appeal. Is that the end of it?

5 Q: I am guided by the advice that I have

6 been given by the Commission's counsel

7 this morning. Now, DEBTOR, FINSAC

8 Limited responded to that letter of June

9 10 1999, are you aware of that?

10 A: You are talking to me?

11 Q: Yes, I am speaking to you, I am speaking

12 to you that FINSAC Limited responded to

13 your attorney Mr. Randolph Williams by

14 letter of July 1, 1992; did Mr. Randolph

15 Williams share their response with you?

16 A: Where is that?

17 Q: You don't have it yet because I have not

18 put it before the Commission but I am

19 about to do so?

20 A: You want me to answer what it is and you

21 have not put it before me?

22 Q: I did not ask you what was in it. You

23 listen to my question, we will get along

24 a lot more speedily. Were you aware

25 that FINSAC had responded to your

1 attorney Mr. Randolph Williams, I
2 asked whether Mr. Randolph Williams
3 shared that with you?

4 A: I have seen responses from FINSAC, yes.

5 Q: Okay. Will you look at this and tell me
6 if this is one. (Letter shown to
7 witness)

8 A: Yes.

9 Q: Can this be marked AS 36?
10 COMM. BOGLE: 36.

11 MRS. PHILLIPS: And that letter which I will call a
12 holding letter, that letter was followed
13 by the letter of December 17, 1999 from
14 Mr. Gabriel Edwards, attorney-at-law,
15 writing on your instructions, which
16 letter was already admitted in evidence
17 as exhibit 10A, remember that, it wasn't
18 in your bundle but I happened to have a
19 copy and when the Commission asked if
20 they could have sight of the letter
21 dated December 17, 1999 and I was able
22 to provide them with a copy and it was
23 marked 10A, you recall that?

24 A: I recall that a letter was introduced by
25 you.

1 Q: Now, can he see the letter AS 10A that
2 was put in earlier.

3 A: Yes.

4 Q: This is a letter, you see, that he says
5 he is instructed by you in the very
6 first line?

7 A: Yes.

8 Q: On behalf of the two companies, that is
9 DEBTOR COMPANY#3 and DEBTOR COMPANY#4?

10

11 A: Yes.

12 Q: And you see at numbered Paragraph 8, it
13 says:

14 We **categorically deny that DEBTOR**
15 **COMPANY#4 had any**
16 **outstanding debt with Century National**
17 **Bank.**

18 And at numbered paragraph 9
19 **DEBTOR COMPANY#3 had a Demand Loan**
20 **account with Century National Bank**
21 **dating back to 1998. The confirmed and**
22 **agreed balance by way of letter dated**
23 **January 21, 1991 (copy attached) as**
24 **follows.**

25 **Demand Loan, \$xxx K**

1 **Interest outstanding, \$xx K**

2 That Demand Loan was just a part of the
3 indebtedness to Century National Bank,
4 wasn't it DEBTOR?

5 A: Yes.

6 Q: Just a part?

7 A: The demand loan was a part.

8 Q: And this gives the impression that the
9 demand loan is something you had from
10 1988 and at January 21, the balance was
11 \$xxx K and that you are no longer
12 indebted to Century National Bank; there
13 is no mention of the additional ..

14 MS CLARKE: Is that a question being put to the
15 witness or is the document being
16 analyzed, what is the question following
17 from this, this gives the impression
18 that the question is going on and on.

19 MRS. PHILLIPS: I can understand why you have a
20 difficulty with it but I will break it
21 down.

22 MS CLARKE: That is besides the point.

23 MRS. PHILLIPS: DEBTOR, paragraph 9, do you agree
24 with me that somebody reading this would
25 think that DEBTOR COMPANY#3's

1 indebtedness to Century National Bank
2 was limited to \$xxx K?

3 A: Do I agree that somebody reading this
4 would believe that DEBTOR COMPANY#3's
5 indebtedness was limited to \$xxx K?

6 Q: Plus interest of \$xx K.

7 A: Somebody who is knowledgeable reading
8 this and who would note that the other
9 part was overdraft would just look at
10 the bank statement and see whether there
11 is an overdraft outstanding or not. If
12 the overdraft is paid off and there is
13 credit in the account, then all you
14 would be talking about is the demand
15 loan; there is no overdraft.

16 Q: There is no overdraft mentioned in the
17 letter?

18 A: There is no need to mention the
19 overdraft in the letter because this is
20 not the overdraft that we are talking
21 about. There is no need to say; you
22 just have to go to your bank statement
23 and see if there is an overdraft on the
24 bank statement.

25 Q: In relation to number item 7 where you

1 speak about the demand, you call it a
2 demand note but...

3 A: Demand note?

4 Q: Your lawyer called it a demand note?

5 A: What is that?

6 Q: At item 7 of that same letter which the
7 Century National Bank had passed on to
8 you, the outstanding demand loan for
9 \$x M.

10 A: It is a promissory note.

11 Q: Thank you. I think so too that it is a
12 Promissory Note. You don't have any
13 legal implications of that?

14 A: The only implication of that - Mr.
15 Chairman, I am here alone except for
16 Counsel trying to help me to marshal the
17 evidence. There are four representatives
18 over there, you cannot allow her to just
19 badgering me with things without my
20 being able to correct the errors that
21 are in it or else you would never get to
22 the truth.

23 COMM. BOGLE: DEBTOR, questions are being asked of
24 you, if you can answer the question you
25 answer it, if you cannot you don't

1 answer. One attorney is at the moment
2 addressing you; you are being questioned
3 by one attorney, not by four attorneys,
4 and when asked a question it is for you to
5 answer whether or not you know the answer.
6 If you don't know the answer,

7 then you don't know the answer. No one
8 is badgering you with anything at all.

9 A: Mr. Chairman, I don't know if I am
10 getting off my head but she asked the
11 question and then she went into a long
12 argument and making reference.

13 COMM. BOGLE: In which case if you don't understand
14 the question...

15 A: It is not understand I don't understand
16 the question you know.

17 COMM. BOGLE: You can ask her to rephrase the
18 question.

19 A: I understand the question very well.

20 COMM. BOGLE: If you understand the question, then you
21 answer it.

22 A: It is the editorial that I am talking
23 about that she goes off into without my
24 being able to, that I sit here alone and
25 not being able to...

1 Q: It is a similar editorial that you
2 are now going into. So therefore may I
3 suggest...

4 A: But you are not stopping her.

5 COMM. BOGLE: DEBTOR, we are not going to carry
6 this thing to another day. Could you
7 please answer the questions when asked
8 so that we can proceed. As I said
9 before, if you can't answer you indicate
10 so; if you can then you answer.

11 A: I answer the question, I would just like
12 to answer the editorial as well.

13 COMM. BOGLE: No, answer the questions.

14 MS CLARKE: Am I to understand, Mr. Chairman, that
15 the witness is being asked or is being
16 encouraged to ignore the editorial and
17 just answer the question as he sees it
18 as a question?

19 COMM. BOGLE: Answer the question.

20 MS CLARKE: Thank you.

21 MRS. PHILLIPS: Now, DEBTOR, this Promissory Note
22 that is mentioned at Item 7 of this
23 letter of December 17, 1999 this is the
24 same Promissory Note that bore an
25 interest rate of 7% over and above

1 Century National Bank's rate, prevailing
2 rate of 69% percent?

3 A: I will identify that Promissory Note for
4 you. It is the same Promissory Note...

5 Q: I just want to confirm if it is the same
6 thing?

7 A: You asked me about the Promissory Note
8 and its characteristics and that's what
9 I am answering. It is the same
10 Promissory Note that covered \$xxx K
11 from Bank of Nova Scotia and \$xxx K
12 for performance bond for Jamaica
13 Telephone Company, now LIME and
14 \$x M overdraft, that is the
15 same Promissory Note. And it is in my
16 witness statement, it has nothing to do
17 with overdraft or demand loan.

18 Q: Would those be the things that were set
19 out at Schedule 3 of the accountant's
20 report?

21 A: I think it is Schedule 3, yes. And
22 referred to in the Auditors' Report from
23 a fellow of the Institute of Chartered
24 Accountants.

25 Q: The same Robinson fellow?

1 A: I beg you pardon.

2 Q: The same Robinson person?

3 A: Mr. Robinson, yes.

4 Q: Okay. Well, you could find it.

5 A: And it is the same Promissory Note in

6 the evidence presented that has the

7 letter from me re: the Telephone

8 Company, the same Promissory Note that

9 has the Debit Advice, taking 23% from

10 \$xxx K, the same Note that is

11 covered by the Guarantee to Bank of Nova

12 Scotia with the penultimate paragraph

13 saying:

14 **It is understood *that the company's***

15 **securities hypothecated to the bank may**

16 **also be held as security for the**

17 **liability.**

18 That is the same Promissory Note.

19 Q: While you have diverted us to Schedule 3

20 of Mr. Robinson's document, could I ask

21 if it is complete, if Mr. Robinson's

22 document that you have provided to the

23 Commission here is it complete?

24 A: If it is complete?

25 Q: Yes. Is anything missing?

1 A: Not that I can recall.

2 Q: On Schedule 3, because I am not
3 experienced in these things as I am in
4 legal matters, so maybe you could assist
5 me since you are an experienced business
6 person, could you point me to where I
7 could find the notes a b c and d, I keep
8 looking for them. Perhaps they are here
9 and I am just overlooking them, Schedule
10 3, there is a reference to note a, note
11 b. note c and note d.

12 A: Yes, ma'am.

13 Q: Just tell me quickly where I can find
14 those notes?

15 A: I will try to find it quickly because I
16 am delighted that you want to see them.
17 The Promissory Notes are here.

18 Q: I saw the Promissory Note.

19 A: Well, this is the Promissory Note, the
20 Promissory Note xxxxxxxxxxxx.

21 Q: I have found the Promissory Note, I am
22 asking for the notes to the Financial
23 Statements?

24 A: The Notes?

25 Q: Perhaps I am misreading.

1 A: Those are what I just read to you.
2 These are the documents, the letter to
3 Telephone Company, to Century National
4 Bank asking to set up the Guarantee, the
5 Performance Bond. The Guarantee from
6 Scotia Bank for the US\$xxx K and to
7 tell you how long we had paid that back,
8 it was \$8.00 for the US\$1 at that time.
9 Q: And just help me because you know - as I
10 said...
11 A: I will help you.
12 Q: Yes, thank you so much. Special
13 Investigation DEBTOR COMPANY#3 &
14 DEBTOR COMPANY#4,
15 that's how the Auditor's Report is
16 headed.
17 A: Yes.
18 Q: Here on page 22 we have...
19 A: Page 22 of what?
20 Q: I have some page numbers at the top, I
21 don't know if you have page numbers at
22 the top of yours. I see a 22 which
23 tells me to find it. I see a thing here
24 called DEBTOR COMPANY#4,
25 Schedule of Demand Loan Payments?

1 A: Yes.

2 Q: Is there a similar Schedule for

3 DEBTOR COMPANY#3?

4 A: I am sorry you haven't been following

5 this closely. The demand loan was to be

6 for DEBTOR COMPANY#4, DEBTOR COMPANY#3

7 was the Guarantor, DEBTOR COMPANY#3 and

8 I were the Guarantors.

9 Q: The Promissory Note, isn't it executed

10 by DEBTOR COMPANY#3?

11 A: No.

12 Q: Okay.

13 A: The Promissory Note was executed by

14 DEBTOR COMPANY#4 and DEBTOR COMPANY#3

15 guaranteed, issued the same Note

16 for the same amount, the same date as

17 Guarantors.

18 Q: The Promissory Note was by DEBTOR

19 COMPANY#3?

20 A: The Promissory Note was by DEBTOR

21 COMPANY#4 and the guarantor

22 DEBTOR COMPANY#3.

23 Q: DEBTOR, DEBTOR COMPANY#4

24 is a different corporate entity

25

from DEBTOR COMPANY#3, you agree?

1 Debit Advice right through are all
2 paying the same account, 2542.

3 Q: DEBTOR, one of the documents you put
4 in was Amended Defence of Second and
5 Third Defendant which you appended to
6 your "AS 12"?

7 A: I don't know if I appended it, but I
8 gave a copy to the....

9 Q: Yes, you did.

10 A: I gave a copy to the office.

11 Q: It is marked "AS12". I don't believe it
12 was put in by me, it was put in by you.

13 A: I didn't mark it.

14 Q: I didn't say you marked it, that is the
15 mark that it bears.

16 A: So I can't identify it as "AS 12".

17 Q: I believe I could even find it in the
18 table of contents that you so helpfully
19 appended to your witness statement, you
20 remember that?

21 A: If I have a copy of it?

22 Q: "AS 12" copy of Court Documents filed in
23 Claim No. xxx of 2003, list of
24 Exhibits of DEBTOR.

25

A:

Oh, that one.

1 Q: So you put it in?

2 A: The difficulty I am having....

3 Q: Just a minute. Let us look at numbered

4 paragraph 11 of the Amended Defence of

5 Second and Third Defendants Jamaican

6 Redevelopment Foundation Inc., numbered

7 paragraph 11 (a) .

8 A: In my with witness statement?

9 Q: It is appended to your witness

10 statement.

11 A: I am looking for Amended...

12 Q: It is right behind the one that says

13 Defence?

14 A: Yes.

15 Q: Go down to paragraph 11(a).

16 **In or around the year 1998 DEBTOR**

17 **COMPANY#4, DEBTOR COMPANY#1**

18 **and DEBTOR COMPANY#2,**

19 **and the Claimant, all related companies,**

20 **were customers of the Bank and were**

21 **afforded loan facilities which included**

22 **overdraft facilities as well as a line**

23 **of credit for the importation of raw**

24 **materials into the island.**

25 The Claimant, who is the Claimant there,

1 isn't it DEBTOR COMPANY#3, yes?

2 A: Yes, the Claimant is DEBTOR COMPANY#3.

3 Q: So they were all primary debtors?

4 A: Whose statement is this?

5 Q: This is the statement of Jamaican

6 Redevelopment Foundation and Dennis

7 Joslin which was introduced into

8 evidence by you? You have your facts as

9 you understand them.

10 A: And you have the facts...

11 Q: And the defendants have the facts as

12 they understand them and this is what

13 the defendants were putting out in

14 response to what you put out.

15 A: No, the defendants have the facts

16 according to how they falsified them.

17 Q: Paragraph (b) says.

18 During September 1998 the Claimant

19 DEBTOR COMPANY#3 requested and was

20 afforded, loan facilities in the sum of

21 \$x M by the Bank, which said

22 sum was secured by the said Mortgage

23 referred to in paragraph 2 hereof. A

24 further sum of \$xxx K...

25 A: Could you help me to catch up. You are

1 at 8?

2 Q: I am at 11(b).

3 A: 11(b) of the...

4 Q: Of the Amended Defence that you put
5 before this Commission.

6 A: Yes.

7 Q: (c) Further security was subsequently
8 requested by the Bank for the
9 outstanding principal and interest due
10 to the Bank and on July 9, 1991 the
11 Claimant, DEBTOR COMPANY#3's principal,
12 DEBTOR, duly executed an
13 Instrument of Guarantee, the terms of
14 which provided his unlimited guarantee
15 to the Bank for the Claimant's
16 Liabilities.

17 (d) In around March 1992 the sum due and
18 owing to the Bank on the said loans
19 amounted to \$x M and DEBTOR COMPANY#3 at
20 the Bank's request, executed a Promissory
21 Note dated March 27, 1992. And it goes
22 on. And so DEBTOR COMPANY#3 was a primary
23 debtor to Century National Bank, I am
24 suggesting to you DEBTOR.

25 A: And you are using this as proof?

1 4: I am making a suggestion, you can accept
2 it or you can reject it.

3 A: I would like Mr. Commissioner...

4 4= Do you accept my suggestion that
5 DEBTOR COMPANY#3 was a primary debtor? Do
6 you want to know where that is, you can
7 look at three pages from the back of your
8 Accountant's Report, it is a Promissory
9 Note where it is stamped by DEBTOR
10 COMPANY#3 and signed by you. DEBTOR
11 COMPANY#3 is a primary debtor, DEBTOR.
12 The point I am making here is that this
13 is a statement of loan payments of DEBTOR
14 COMPANY#4. I am asking you
15 where in this and in another statement
16 in relation to DEBTOR COMPANY#3 a
17 separate legal entity, where are those
18 a, b, c and d to which the Accountant
19 did not segregate one company from
20 another.

21 MS CLARKE: Mr. Chairman, I am not hearing the
22 answer, I am hearing questions. Was
23 there an answer to the suggestion that
24 was put?

25 COMM. BOGLE: We have a number of questions. I agree

1 with you.

2 A: The answer to the question if DEBTOR
3 COMPANY#3 was a primary debtor, it is no.
4 And having answered that and given the
5 editorial that followed it I need to
6 explain.

7 COMM. BOGLE: Go ahead DEBTOR.

8 A: Let us look at the same Amended Defence
9 of the 2ND and 3RD Defendant which is
10 making these statements.

11 COMM. BOGLE: That is now in support of your answer
12 that DEBTOR COMPANY#3 is not a primary
13 debtor? A: Not a primary debtor. I would
14 like to clarify the point made by Counsel
15 which would help to clarify the matter
16 for the Commission where she mistakenly
17 termed an overdraft.

18 COMM. BOGLE: No, no that is not where you are,
19 DEBTOR, don't go there DEBTOR. The
20 answer you gave, you said that DEBTOR
21 COMPANY#3 is not a primary debtor. Now,
22 that is what I am asking you to address.
23 We are not going to go into the matter of
24 the differentiation between a loan and a
25 demand loan right now. We are going to

1 deal with that matter now. The matter
2 is, you said DEBTOR COMPANY#3 is not a
3 primary debtor. You indicated that you
4 are going to provide evidence to prove
5 that, that is where we are. You further
6 said you would find it from the same
7 document that you referred to. I don't
8 know if you didn't see it, but if you
9 have the information then give us the
10 information to support your statement
11 that DEBTOR COMPANY#3 is not a primary
12 debtor. A: Is a guarantor of the debt a
13 primary debtor? That's what I am having..

14 MRS. PHILLIPS: Mr. Chairman, I agree that it is a
15 guarantor of the debt you know, but it
16 is also a primary debtor.

17 A: Maybe Counsel could assist me to show
18 where did DEBTOR COMPANY#3 incur debt

separate

19 from what it guaranteed?

20 Q: DEBTOR, first page of what was just
21 handed out, it is a document signed by
22 you, whose signature is underneath
23 yours?

24 A: I. DEBTOR CO OFFICER.

1 A: I. DEBTOR CO OFFICER.

2 Q

3 And what position he or she held in your

4 company?

5 A: He was a director at the time.

6 Q

7 Of which company?

8 A: Of both,

9 Q

10 Both DEBTOR COMPANY#3 and DEBTOR

11 COMPANY#4?

12 A: Yes.

13 Q

14 Who was the registered owner of 149822

15 and 146557?

16 A: DEBTOR COMPANY#3.

17 Q

18 Who is the registered owner of those

19 properties, DEBTOR COMPANY#3 isn't that

20 correct, DEBTOR?

21 A: No, no, those are not DEBTOR

22 COMPANY#3 properties.

23 Q: Pardon me, DEBTOR?

24 A 822 and 557 are DEBTOR COMPANY#3

25 properties, Oh yes, I am sorry, those are

DEBTOR COMPANY#3 properties.

Q

So this is a document being executed by

yourself and DEBTOR CO OFFICER?

A: DEBTOR CO OFFICER.

Q: DEBTOR CO OFFICER on behalf of DEBTOR

COMPANY#3

1 because they are speaking about
2 the property owned at Volume xxxx Folio
3 xxx and Volume xxxx Folio xxx and it is
4 authorising the bank to grant you a loan
5 of \$x Million and you confirmed
6 having executed a legal Mortgage of
7 \$x Million that's a Mortgage debt of
8 \$x Million?

9 A: What is the date on this?

10 Q: You see a date there?

11 A: No.

12 Q: You see your signature there, though?

13 A: (No answer).

14 Q: Are you denying that you signed it?

15 A: I don't know what it is.

16 Q: Are you denying that you signed it?

17 A: I don't know what this is.

18 Q: Turn the page. You see a demand loan, a
19 Promissory Note for \$xxx K and
20 there is another one for \$x Million
21 where the impressed stamp is very faint
22 on this one. The signature below the
23 \$x M, is that the same DEBTOR CO OFFICER
24 person?

25 A: I really don't refer to people as

1 DEBTOR CO OFFICER person.

2 Q: DEBTOR, let us go to the next
3 document because time is moving and you
4 are not being very co-operative here.

5 A: No, no.

6 Q: The next one is Instrument of Guarantee.
7 You see an Instrument of Guarantee the
8 next document there issued by DEBTOR
9 COMPANY#3, sorry issued by you for the
10 debts of DEBTOR COMPANY#3, Unlimited
11 Guarantee of DEBTOR to Century
12 National Bank for the debt of DEBTOR
13 COMPANY#3, you see that you guaranteed
14 the debt at the time?

15 A: Guaranteed the debt of DEBTOR COMPANY#3,
16 yes.

17 Q: Okay. So you are the Guarantor of
18 DEBTOR COMPANY#3, the borrower in this
19 document here? Let's look at the next
20 document, Mortgage Under the
21 Registration of Titles Act. Do you see
22 that? Who is it executed by?

23 A: Mr. Chairman...

24 Q: Who is it executed by? Is there
25 something objectionable about that

1 question?

2 A: This is dated 27th of December 1988.

3 Yes. Who it is executed by?

4 A: All of these are 1988.

5 Q: Turn the next page. DEBTOR, I am not
6 dealing with the date now, I am asking
7 who executed that mortgage?

8 A: Yes, I executed it.

9 Q: Isn't it DEBTOR COMPANY#3? You see the
10 stamp there, your signature and the
11 other signature beside it?

12 A: What DEBTOR COMPANY#3 was doing was
13 authorising Century to use its title to
14 secure the loan. This is not necessarily
15 that the loan was given to DEBTOR
16 COMPANY#3, it was authorising them to use
17 its property to secure the loan. These
18 are not documents of loan disbursements,
19 these are documents of Securities being
20 offered. Q: This is not a Mortgage by
21 way of guarantee, it is a Mortgage under
22 the Registration of Titles Act.

23 A: How else would you register a mortgage
24 on a property that is offered as
25 guarantee, even if it is somebody else

1 borrowed it?

2 Q: The person who owns the land borrowed
3 the money.

4 A: Who says that?

5 Q: These documents show that.

6 A: Show me where the documents say that.

7 Q: The first one, this document on the
8 first page says that.

9 A: This document on the first page I...

10 Q: The Instrument of Mortgage says that.

11 A: The Instrument of Mortgage?

12 Q: And right behind that we have a
13 Resolution Passed at a Director's
14 Meeting of DEBTOR COMPANY#3 September
15 22, 1988, Borrowing Resolution by
16 DEBTOR COMPANY#3.

17 A: Mr. Chairman, if you look at these
18 things, and that's why she wants to pass
19 on from the date so rapidly, that on the
20 11th of August 1988 there was a note
21 here for \$xxx K. Added on to that
22 is one on the 27th of March 1992 which
23 is four years after you have a
24 Promissory Note.

25 MRS. PHILLIPS: Mr. Chairman, can this bundle of

1 Securities be marked as AS whatever it
2 is?

3 COMM. BOGLE: "AS 37".

4 MRS. PHILLIPS: Obligated. I think they speak for
5 themselves.

6 So DEBTOR, going back to your
7 Accountant's Report, you would agree
8 with me that there is no schedule of the
9 loans of DEBTOR COMPANY#3 as distinct
10 from the loans of DEBTOR COMPANY#4?

11

12 A: There is no loan to DEBTOR COMPANY#3.

13 Q: You would agree with me that there is no
14 apparent inconclusion here of those,
15 A, B, C, and D referenced in Schedule 3.

16 A: I am sorry, could you repeat that.

17 Q: Do you agree with me that there is no -
18 since you have not been able to show me
19 where you I can find it, no A, B,C, and D
20 referenced in Schedule 3?

21 A: The notes are the supporting evidence
22 which shows that these were guarantees
23 to Bank of Nova Scotia and to Telephone
24 Company; performance bonds and guarantee
25 which are now cleverly clipped together

1 with documents four years previously.

2 Q: Well if the documents speak for
3 themselves. DEBTOR, your attorney
4 Mr. Gabriel F Edwards, he was written to
5 by FINSAC's Attorney, Mr. Alfred
6 McPherson on January 19, 2000 - oh, this
7 was exhibited already. This was
8 exhibited already Mr. Chairman, so I'll
9 pass over it.

10 DEBTOR, on June 12, 2003 you received
11 a demand letter for payment of
12 indebtedness of xx
13 million dollars owed to Jamaican
14 redevelopment foundation. Do you recall
15 that, you recall getting that letter?

16 A: I recall having a statement from them
17 yes.

18 Q: It is not a statement it is as demand
19 letter by registered mail?

20 A: Yes.

21 Q: And on the same day there was another
22 letter, that one - sorry can I number
23 this one.

24 COMM. BOGLE: 38, AS38.

25 MRS. PHILLIPS: This one is to DEBTOR c/o

1 DEBTOR COMPANY#3 and DEBTOR,
2 Kingston is it?
3 A: Yes.
4 Q: Should there be an N there, DEBTOR?
5 Kingston.
6 There was also on the same day issued by
7 Dennis Joslin Jamaica Inc, a letter of
8 demand dated same June 17, 2003 issued
9 to DEBTOR COMPANY#3; DEBTOR COMPANY#3
10 at its various addresses: xxx king
11 Street, xx Church Street and Shop #xx
12 Kingston Mall, xx Ocean Boulevard.
13 A: I never lived at this address but I have
14 copies of this.
15 Q: Sorry?
16 A: I have never lived at that address.
17 Q: You have never what?
18 A: I have never lived at Kingston. 19
20 Q: What about the other address, you lived
21 there?
22 A: Which one is that? There were two
23 addresses on that previous letter.
24 Q: You see letter there dated 17 June 2003,
25 that same date, same amount being

1 demanded. You agree, DEBTOR?

2 A: Yes.

3 MRS. PHILLIPS: I ask that this be marked AS39.

4 Then DEBTOR, you recall that we had
5 two Interlocutory Judgements which were
6 marked, you recall that from the last
7 occasion?

8 A: Yes.

9 Q: That case DEBTOR, as you can see that
10 a firm other than my firm represented
11 the second and third defendants in that
12 matter but could you tell me whether
13 this matter proceeded to final hearing
14 or trial?

15 A: I am glad to tell you that, that was
16 filed in 2003/4.

17 Q: 2003.

18 A: An until now we haven't reached Case
19 Management Hearing yet.

20 Q: Yes?

21 A: That is the power those people have.

22 Q: Who are you calling 'those people'?

23 A: Those people you advocate for.

24 Q: My clients? I only advocate for my
25 clients.

1 DEBTOR, have a look at this for me.

2 Now, DEBTOR, you are the claimant in

3 this matter, DEBTOR COMPANY#3?

4 DEBTOR COMPANY#3 is your company is it

5 not, DEBTOR?

6 A: Yes.

7 Q: And it is the claimant in this matter,

8 is it not?

9 A: Yes.

10 Q: And it is the claimant who has

11 responsibility to advance the matter, is

12 it not?

13 A: I didn't know that. I was told...

14 Q: Okay. You are not a lawyer. Just flip

15 over the first page of what you have.

16 You see an order for seizure and sale of

17 goods signed by the Registrar of the

18 Supreme Court (Acting) in this same

19 matter?

20 A: Yes.

21 Q: For costs awarded to the second and

22 third defendants, Jamaica Redevelopment

23 Foundation Inc. and Dennis Joslin

24 Jamaica Inc. in the sum of \$xxx K

25 together with interest thereon at 12%

1 per annum from the 14th December, 2008
2 until payment.

3 A: Yes.

4 Q: Maybe it is 2005, I am not sure. Until
5 payment. Yes?

6 A: That is the point I was making, that the
7 fixed claim was filed in December,
8 2004.

9 Q: No, it was filed in 2003.

10 A: 2003. We have had a hearing where the
11 injunction was refused. We brought
12 evidence to show that the loan was, the
13 Promissory Note was signed by DEBTOR
14 COMPANY#4. We had a retired Senior
15 Superintendent of Police to say, one,
16 the claim that was made out was
17 incorrect. We went through that and we
18 had a second hearing which went against
19 us and we went to the Court of Appeal
20 and until today, the claim has not come
21 up for hearing. So the evidence that I
22 am presenting here has not been before
23 the court and I have no...

24 Q: DEBTOR please, one step at a time,
25 one step at a time. what does this cost

1 order relate to? It says Claim No.
2 H.C.V.xxxx of 2003. And this is the
3 same claim in which we have the
4 Judgement of Mrs. Sinclair-Haynes and
5 the Honourable Miss Justice Mangatal,
6 both of which have been to the Court of
7 Appeal and been disposed of by the Court
8 of Appeal. We have the final orders by
9 the Court of Appeal attached to the
10 Judgement submitted.

11 We know that Jamaican Redevelopment and
12 Dennis Joslyn prevailed on Appeal in
13 relation to both Appeals, but this order
14 for cost is not a Cost Order made in the
15 Court of Appeal, this is a cost order
16 made in the Supreme Court.

17 MS. CLARKE: Is this a question being put to the
18 witness?

19 MRS. PHILLIPS: No. This is a Cost Order made in the
20 Supreme Court. What are these Cost
21 Orders payable in relation to? What
22 aspect of claim No. 2003 HCV xxxxx were
23 you ordered to pay cost on?

24 A: As far as I am concerned I am waiting to
25 be able to get evidence before the court

1 on my claim and where I can point out
2 the false assertions made by Joslin,
3 Jamaican Redevelopment Foundation and
4 FINSAC. The false statements which if
5 the Chairman will allow me, you have put
6 into evidence or we have put into
7 evidence the amended defence of the
8 defendants and we have it here. And Mr.
9 Chairman, you told me repeatedly that
10 you got it, and those affidavits that
11 have been put into court are
12 diametrically opposed to the facts that
13 you got and you heard.

14 COMM. BOGLE: DEBTOR, we have been provided with
15 the record, right?

16 A: Yes.

17 COMM. BOGLE: So we will adduce it when we are ready.

18 At the moment what we are doing now is
19 just trying to get additional
20 information and some clarity. So if you
21 have answered the question we have the
22 information already, we have the
23 information in all the documents that
24 you are talking about. So let's see if
25 we can proceed. Your sitting there and

1 talking the next two hours is not
2 going to help your cause or the
3 Commission's cause, believe me. Let us
4 see if we can get questions answered so
5 that it can help the Commission's cause
6 and your cause.

7 A: I am trying to advance the Commission's
8 cause.

9 COMM. BOGLE: No, no, the Commission will advance its
10 cause?

11 A: That's why I am here. I am trying to
12 enlighten you as to what is happening.

13 COMM. BOGLE: Right now you are not enlightening us,
14 you are confusing us so if you allow the
15 questions to be asked and answer then we
16 will review the situation and come to a
17 conclusion?

18 A: The questions are designed to confuse
19 and I am trying to clarify.

20 COMM. BOGLE: No, we are not confused.

21 A: You wouldn't know, sir, because you
22 don't have the facts.

23 COMM. BOGLE: Anyhow. Go ahead, Mrs. Phillips.

24 MRS. PHILLIPS: May this batch of documents relating to
25 the cost order made by the Supreme Court

1 in this action on the 9th of February
2 2006, filed 9th of February, 2006 dated
3 March 15,2006, may this batch of
4 documents be labeled AS...

5 MS. CLARKE: I am not sure what batch of documents
6 because the Judgement is in fact in
7 already, both Judgements as 12A and 12B,
8 I believe. I am not certain as to which
9 batch of documents my friend is
10 referring.

11 MRS. PHILLIPS: This that I just handed to you with a
12 letter on the front of it from Piper and
13 Samuda to the Bailiff for seizure and
14 sale and appended to that are the
15 Bailiff's Reports culminating in his
16 visit to DEBTOR with his comments
17 that he visited Kingston,

18
19 where the Defendant's Manager lives.
20 DEBTOR claimed that his business
21 is closed and that he has no money to
22 settle the debt. That batch is AS40.

23 MS. CLARKE: If I may Mr. Chairman, and this is not
24 by way of an objection. One would want
25 to indicate, and I believe it is for

1 clarity as well, in light of the fact
2 that the witness seems unable to answer
3 as to what the cost order was for, I
4 think all my friends will bear me out
5 that in relation to two interlocutory
6 evidence Judgements that have been put
7 into evidence, orders for cost were made
8 in one case on the Appeal and in one in
9 the hearing below that cost be awarded
10 against the witness and/or his company.
11 So perhaps we would want to know with
12 some clarity that the cost would have
13 arisen based on Interlocutory Hearing
14 and at that stage costs were awarded
15 upon the conclusion of the interlocutory
16 proceedings against the witness.

17 MRS. PHILLIPS: Mr. Chairman, I am sure your Counsel
18 will guide you in relation to this. In
19 an Interlocutory matter even if costs
20 are ordered they are recoverable until
21 the end of the matter unless the Court
22 specifically said they are to be taxable
23 immediately. In the orders that I am
24 looking at in the Interlocutory matters
25 here that are appended to the Notice of

1 Appeal, there is nothing here saying
2 that the cost ordered by the judges that
3 first instance on the Interlocutory
4 matters were taxable immediately. Costs
5 are usually taxable at the end of a
6 proceeding and that is why I submit the
7 Cost Orders, those are not Cost Orders
8 taken out in the Court of Appeal in
9 relation to the Appeal; these are Cost
10 orders ordered in the Supreme Court. So
11 I am just wondering, it raises the
12 question as to whether there is a final
13 Judgement.

14 This gentlemen says no. My firm was not
15 on record, I do not know. I asked him
16 what the Cost Order is related to, he is
17 unable to assist us, but the fact that
18 there is a Cost Order is a signal that
19 there probably is a final Judgement in
20 that matter.

21 A: Those costs are not related to the
22 Supreme Court Hearing, they are related
23 to the Interlocutory matter.

24 MRS. PHILLIPS: The Interlocutory matters were in the
25 Supreme Court, both of them.

1 If you look, Mr. Chairman, at exhibit
2 AS12(A); 12A is the Interlocutory
3 Judgement of the Honourable Mrs. Justice
4 Sinclair-Haynes.

5 A: That was in our favour.

6 Q: Yes, and the appeal was allowed.

7 A: Yes, the evidence did not reach the
8 court.

9 MRS. PHILLIPS: Mr. Chairman, you have that document and
10 you will see that it was heard the 16th
11 of March, 2004, that's the second date.
12 You always refer to the last date as the
13 date of the Judgement. And you will see
14 on the next page - since it is an
15 Interlocutory Judgement my understanding
16 is I can refer to its content and if you
17 look at the penultimate paragraph it
18 said DEBTOR COMPANY#3 Limit sought an
19 injunction restraining the defendants
20 from selling or otherwise disposing of
21 the land subject of the mortgage.
22 This application was refused by the
23 Honourable Mr. Justice Anderson on the
24 5th of February, 2004.
25 Since the refusal of the injunction by

1 the Honourable Mr. Justice Anderson

2 DEBTOR COMPANY#3 has obtained an opinion

3 of Karl Mingo Major a Consultant

4 Document Examiner who asserts the seal

5 impressed on the Promissory Note was in

6 fact that of DEBTOR COMPANY#4 and not

7 that of DEBTOR COMPANY#3. DEBTOR

8 COMPANY#3 is again seeking an interim

9 injunction.

10 So they apply for an injunction; it's

11 refused. Less than one month later they

12 apply for the same injunction again from

13 the Supreme Court.

14 And in the middle of the next page you

15 see DEBTOR COMPANY#3 has leveled

16 allegations of fraud against the

17 defendants. That includes my client by

18 the way.

19 And at the end of that paragraph,

20 penultimate paragraph you see the line:

21 It is the contention of DEBTOR COMPANY#3

22 that the moneys owed on the said mortgage

23 were fully repaid.

24 And then you see submissions by Mr.

25 David Johnson who was the attorney for

1 my client and submission 41 on the next
2 page, page 4, he says: The evidence upon
3 which the claimant sought to rely in
4 support of his application is the same as
5 is now advanced in support of the present
6 application.

7 So Mr. Johnson, my friend was saying
8 that this is just a rehashing of the
9 same application that was before Mr.
10 Justice Anderson and was refused.

11 Then on the next page you see that the
12 main issue the court was concerned with,
13 being the first issue to be determined,
14 was whether the claimant was seeking to
15 litigate the same issues that were
16 litigated before by the Honourable Mr.
17 Justice Anderson.

18 And then it goes on and at the end of
19 the Judgement, the learned judge finds
20 on page 9, that the submissions of Dr.
21 Randolph Williams that special
22 circumstances exist, they are
23 compelling, the Justice of the case
24 demands a rehearing as DEBTOR COMPANY#3
25 has now put forward a prima facie case of

fraud.

1 And then on the next page you see she
2 says Mr. David Johnson submits that the
3 allegations of fraud ought to be struck
4 from the affidavit since they were not
5 pleaded in any claim, and at the end she
6 says:

7 Accordingly the preliminary objection -
8 that is, Mr. Johnson's objection - is
9 dismissed and the claimant is at liberty
10 to proceed with the application for the
11 interim injunction.

12 Leave to appeal is then granted. They
13 go to the Court of Appeal and you see
14 the Notice of Appeal immediately
15 follows. The details of the Order of
16 Appeal are: The preliminary objection is
17 dismissed and the claimant is at liberty
18 to proceed with the application for
19 interim injunction.

20 That is what is appealed and then the
21 Grounds of Appeal are set out and at page
22 3 of the Notice and Grounds in numbered
23 paragraph 4, you see the orders sought
24 are that the order made by the learned
25 trial judge should be set aside

1 and the claimant's application for
2 interim injunction dismissed. Cost of the
3 appeal to be the appellant's, etc. Any
4 interim injunction subsequently granted
5 in the respondent's favour against the
6 appellants on the identical affidavit
7 evidence is to be discharged. And then
8 you see a copy of the Order of Mrs.
9 Justice Sinclair-Haynes which you
10 attached to the Notice and Grounds of
11 Appeal, that is the Order that is being
12 appealed, and then you flip over and you
13 see the Certificate of the Result of the
14 Appeal. The Appeal came on for hearing on
15 the 15th and 22nd of June and on the 25th
16 and 26th of July, 2005. It was heard
17 before the Honourable Mr. Justice Forte,
18 then President of the Court of Appeal,
19 the Honourable Mr. Justice Panton, then
20 Justice of Appeal now President of the
21 Court of Appeal, the Honourable Mrs.
22 Justice McCalla, then Acting Justice of
23 Appeal, now Chief Justice of Jamaica. And
24 the Order that is made is:- **Appeal**
25 **allowed. Cost to the**

1 question, we are not now at this point I
2 believe, attempting to read through and
3 refuse what the witness said.
4 Insofar as it relates to a question, I
5 would like to know what the last
6 question was and what the response was
7 and if there was a question after that.
8 MRS. PHILLIPS: The last question, the last statement...
9 MS. CLARKE: If I may hear it from the record,
10 please.
11 MRS. PHILLIPS: Mr. Chairman, I have before drawn the
12 Tribunal's attention to salient parts of
13 Judgements on many occasions before. I
14 have had a ruling this morning that says
15 that in an interlocutory matter I may do
16 so. I am now doing so in accordance with
17 the ruling.
18 COMM. BOGLE: I don't think the objection is to your
19 using the information thereof.
20 MS. CLARKE: Not at all, sir.
21 MRS. PHILLIPS: Can we proceed then because to stop to
22 go back to the question is a waste of
23 time.
24 COMM. BOGLE: I think as a matter procedure, was there
25 a question related to this?

1 MS. CLARKE: Which has given way to this exhaustive
2 reading of the data.

3 COMM. BOGLE: Which is what we are trying to
4 establish. We have read but was there a
5 question to the witness relating to
6 this?
7 MRS. PHILLIPS: There was a question that led it. I
8 think there was a question as to whether
9 the costs were ordered in the
10 interlocutory matter or whether the
11 costs were ordered in the Court of
12 Appeal.

13 MS. CLARKE: So may we hear the answer to that.

14 MRS. PHILLIPS: I have looked at the Judgement, the
15 Judgement has said that there were costs
16 awarded.

17 MS. CLARKE: Is Counsel supplying the answer?

18 COMM. BOGLE: Please!
19 But the answer has been put to the
20 witness.
21 MRS. PHILLIPS: No, I indicated to the Tribunal that
22 they would need the assistance of their
23 Counsel because the Cost Order which has
24 just been exhibited is a Cost Order made
25 in the Supreme Court.

1 MS. CLARKE: And that I appreciate so even now the
2 exhaustive reading from the entirety of
3 the document, if we are dealing with the
4 matter of cost and the Cost Order.

5 MRS. PHILLIPS: First of all it is not an exhaustive
6 reading.

7 MS. CLARKE: How could this have arisen in terms of
8 reviews and....

9 MRS. PHILLIPS: I understand why my friend does not like
10 what is here, I really understand that
11 because...

12 MS. CLARKE: It is not what Counsel understands, but
13 that's not the point.

14 MRS. PHILLIPS: ...both appeals went in favour of my
15 client.

16 MS. CLARKE: Relevance to the issue, Counsel.

17 MRS. PHILLIPS: It is very relevant to the issue because
18 the issue here is whether or not
19 DEBTOR is speaking the truth when he
20 says that his debts to Century were
21 repaid and there was no debt in
22 existence when the matter transferred
23 from Century to FIS and from FIS to JRF.

24 MS. CLARKE: Mr. Chairman, Counsel doesn't like some
25 words, you know.

1 COMM. BOGLE: Could we have one person speaking.

2 MRS. PHILLIPS: I understand why my friend is upset when

3 I take to these Judgements not just one,

4 Justice Anderson; Not just two, the

5 Court of Appeal's allowing of my

6 client's appeal of the Honourable Mrs.

7 Justice Sinclair-Haynes' Judgement but

8 the Judgement now of Miss Justice

9 Mangatal, which is even more to the

10 point and which was upheld by the Court

11 of Appeal when DEBTOR appealed. All

12 these issues were raised.

13 Now if it is that there is no final

14 Judgement and since these are

15 Interlocutory Judgements, then my

16 understanding of the ruling this morning

17 is that I am at liberty to speak to them.

18 If it is that this Commission finds that

19 the Cost Order must mean that there was a

20 final Judgement, then since those costs

21 were awarded to my client then we can

22 assume that, that Judgement would have

23 been in favour of my client and if we are

24 applying that principle, then we can not

 hear any further

1 evidence from DEBTOR and just read
2 the Judgements.

3 COMM. BOGLE: As far as this Commission is concerned
4 there was as ruling this morning that we
5 can refer to interlocutory decisions.
6 However, at the same time, there must be
7 relevance and the relevance must be
8 regarding the statement of the witness
9 and you are supposed to be
10 cross-examining and I am just trying to
11 understand myself the question as I
12 said, the answer or no answer and what
13 clarification is being given. Now, based
14 on what you have said, I think that we
15 can now move on. I think all the
16 clarification has been given already.
17 MRS. PHILLIPS: Thank you Mr. Chairman.

18 I will now refer to AS12B which is the
19 Judgement of the Honourable Miss Justice
20 Mangatal. On page 3 at numbered
21 paragraph 3 he says...

22 MS. CLARKE: I am sorry, when Mr. Chairman, you said
23 we can now move on because the
24 clarifications have been given, I am not
25 certain if you were referring to or

1 giving some leverage to this.

2 COMM. BOGLE: Mrs. Phillips, we still have the witness
3 in the stand. If you are
4 cross-examining, then I would like you
5 to continue the cross-examination. If
6 you are summing up then that is
7 different, but please address questions.

8 MRS. PHILLIPS: I understand.

9 DEBTOR, did you say to the court that
10 the Promissory Note in question was not
11 executed by DEBTOR COMPANY#3?

12 A: Yes, I did.

13 Q: And what did the court find in relation
14 to that?

15 A: I don't think the court found either
16 way. From what I recollect the court
17 didn't address who executed the
18 Promissory Note at all...

19 Q: Did you say to the court that there was
20 fraud?

21 A:so it wasn't a new matter and we
22 didn't plead fraud.

23 COMM BOGLE: You did answer.

24 MRS PHILLIPS: Did you say to the court that fraud was
25 perpetrated against DEBTOR COMPANY#3?

1 A:

And I still maintain that.

2 Q

Did you say that to the court?

3 A:

No, I didn't speak to the court, my
4 lawyers spoke to the court.

5 Q:

Did you in the document filed by you
6 claim that a fraud had been perpetrated
7 against DEBTOR COMPANY#3 by the
8 defendants?

9 A:

Yes, I still maintain that, and the
10 evidence is here.

11 Q:

And am I correct DEBTOR, that the court
12 found that there was no sufficient
13 pleading of fraud to justify the
14 allegation made by you?

15 A:

Legal technicality.

16 Q:

Am I correct that, that is what the
17 court found?

18 A:

I don't know what the court found.

19 Q

Miss Justice Mangatal?

20 A:

I don't think she spoke to that, that was
21 what was presented by the counsel on the
22 other side that it was not pleaded. Is it

23 Q:

also correct DEBTOR, that the Court
24 found, the Court, that is, The Honourable
25 Miss Justice Mangatal found

1 that you, meaning DEBTOR COMPANY#3,
2 had not demonstrated that there is a
3 substantial question to be determined
4 at the final hearing?

5 A: (No answer)

6 Q: Did she find that?

7 A: Not to my knowledge.

8 Q: Okay, let us look at page 4, numbered
9 paragraph 5.

10 A: What am I looking at?

11 Q: You are looking at the Judgment of The
12 Honourable Miss Justice Mangatal.

13 A: I don't think I have it, you know.

14 Q: Well, I am sure Mr. DePeralto can
15 provide you with a copy.

16 That's a one page document?

17 Everybody got a copy on the last

18 occasion. Can I just borrow somebody

19 else's copy. Just look at this copy for

20 me DEBTOR, since you are having

21 difficulty finding yours.

22 *(Documents handed to witness)*

23 A: Yes, I have it here. Uh-huh.

24 Q: Look at numbered paragraph 5. Paragraph
25 5.

1 "In my view, the Claimant has not
2 demonstrated that there is a substantial
3 question to be determined at the final
4 hearing. This is so based on:
5 (a) the state of the pleadings,
6 statement of case;
7 (b) the nature of the evidence alleging
8 that the promissory note dated March 27,
9 1992 was not signed by the Claimant; and
10 (c) the nature of the evidence suggested
11 that there is no indebtedness of the
12 Claimant to the Defendants entitling it
13 to enforce the power of sale under the
14 mortgages in question".

15 Do you see that finding?

16 A: I see that.

17 Q: Look at page 5. Remember you said that
18 you were maintaining that there was a
19 fraud perpetrated against your company
20 and you made that known to the court?

21 A: Yes, because the Promissory Note - there
22 were two Promissory Notes.

23 Q: DEBTOR, look at page 5.

24 A: Five, yes.

25 Q: Half way down in the first paragraph, do

1 you see a statement starting "*To date*"?

2 A: That we have no allegation in the

3 pleadings.

4 Q: Do you see a sentence starting, "To

5 date"?

6 A: Yes.

7 Q: **"To date, the Statements of Case have no**

8 **allegations of fraud against the**

9 **Defendants and the Statements of Case**

10 **remain in the same state that they were**

11 **when Justice Anderson heard the matter.**

12 **I do not regard the allegation raised at**

13 **paragraph 9 of DEBTOR's Further**

14 **Affidavit as being sufficient."**

15 A: Yes.

16 Q: Now, DEBTOR do you recall the court

17 repeating that there was no substantial

18 issue to be determined at the trial?

19 Look at paragraph 8...

20 A: At the trial?

21 Q: Yes.

22 A: There was a trial?

23 Q: Look at paragraph 8 for me, numbered

24 paragraph 8: **"The Issue as to**

25 **Indebtedness."**

1 Didn't you raise the issue of the
2 indebtedness before the court, before
3 Justice Anderson, before the Chief
4 Justice, before Justice Miss Mangatal,
5 before the Court of Appeal, Past
6 President, Present President, Chief
7 Justice? Who have you not raised it
8 before?

9 MS CLARKE: What's the question?

10 MRS PHILLIPS: Do you see numbered paragraph 8? This
11 Judgement has been upheld by the Court
12 of Appeal?

13 A: Of course.

14 Q: Okay, good.

15 **"I am not satisfied that the Defendant**
16 **has raised any substantial issue to be**
17 **determined at trial regarding its**
18 **indebtedness to the Defendants under the**
19 **mortgages. It is trite that when it**
20 **comes to monetary indebtedness, it is**
21 **not enough to make bare denials, which**
22 **are easy to make. One must furnish proof**
23 **of payment, or repayment of sums loaned.**
24 **Indeed, the process of summary judgment,**
25 **where issues are determined without the**

1 **need for trial against this is the most**
2 **frequent application in the area of**
3 **loans and monetary indebtedness".**

4 A: Yes, I said that. The Schedules of
5 Payment and the..

6 Q: Just a minute.

7 A: ...Promissory notes, all of those
8 things.

9 Q: Just a minute not finished. Skip down
10 four lines. Do you see a sentence which
11 starts, **"The Claimant has not satisfied**
12 **me..."?**

13 A: What page, where is that?

14 Q: That same page where she spoke about
15 Summary Judgment. Skip down four lines
16 on page V.

17 A: Page 7.

18 Q: After the citation of "Odgers'
19 Principles of Pleadings and Practice'",
20 Do you see a sentence which starts:
21 **"The Claimant has not satisfied me..."?**

22 A: Yes.

23 Q: Let's look and see what is the court's
24 view.
25 **"The Claimant has not satisfied me to**

1 the necessary degree of probability that
2 he will have success at trial, or raise
3 a substantial issue of whether money is
4 owed to the Defendants under the
5 mortgages. I accept the **submissions** of
6 Mr. Kelman for the 1st Defendant --
7 that means FIS---in this regard. It is
8 not disputed that the mortgages were
9 continuing securities and it is agreed
10 that they were unstamped upon two
11 separate occasions **i.e. in** 1990 and in
12 1993. 1993 of course being the \$xxx K.
13 The Defendants say that the unstamping
14 was to deal with further loan disbursed
15 at the request of the Claimant. Indeed
16 the titles bear expressed notations that
17 the unstamping was to cover further
18 indebtedness of \$xxx K and
19 \$ xxx K respectively...

20 A: Yes.

21 Q: ...in 1990 and in 1993. The reasons put
22 forward by the Claimant in the
23 Affidavits and by way of argument
24 attempting to account for the unstamping
are just not cogent, or are at any rate

1 **certainly far less cogent than the**
2 **reasons put forward by the Defendants**
3 **and go no way towards satisfying me that**
4 **at the trial there will be a real**
5 **question between the parties as to the**
6 **indebtedness.**

7 MS CLARKE: Is the witness being asked if he has
8 seen that?

9 MRS PHILLIPS: Yes.

10 MS CLARKE: Is that the question?

11 A: Mr. Chairman, Counsel has gone through
12 great details in the court and you have
13 allowed me no time at all to deal with
14 these matters to...

15 COMM BOGLE: DEBTOR, these documents were put in
16 during your presentation.

17 MS CLARKE: No, I am sorry.

18 A: What's that?

19 MS CLARKE: Mr. Chairman, this document was actually
20 put in not by -- it was put in during
21 the presentation but it wasn't actually
22 put in without clue from Counsel for
23 JRF.

24 MRS PHILLIPS: No, no, Mr. Chairman.

25 MS CLARKE: Without clue from Counsel...

1 MRS PHILLIPS: The Tribunal asked whether or not the
2 witness is aware of any Judgement of the
3 court impacting on this matter. The
4 Tribunal asked that and I said that I
5 had two with me and the Tribunal asked
6 for them to be submitted.

7 COMM BOGLE: I agree with that.

8 MRS PHILLIPS: So my friend is constantly giving
9 unsolicited instructions to me.

10 COMM BOGLE: All I am saying **is**, it has been done
11 before and under redirection you may
12 take the witness through if you wish and
13 get whatever clarification you wish at
14 that time after the cross-examination.

15 MRS PHILLIPS: Thank you, Mr. Chairman. The judgment
16 speaks for itself. The Judgement speaks
17 for itself, Mr. Chairman.
18 You will see that the next item in the
19 exhibit is the Notice of Appeal from
20 the -- because DEBTOR COMPANY#3 did
21 appeal the Judgment of the Honourable
22 Miss Justice Mangatal.

23 MS CLARKE: Is there a question now being put to the
24 witness?

25 MRS PHILLIPS: I am speaking to the Commission. And the

1 next document is the formal order of the
2 Honourable Miss Justice Mangatal being
3 attached to the Notice of Appeal and the
4 very last document in the exhibit is
5 certificate of the result of DEBTOR
6 COMPANY#3's appeal against that Judgement
7 and it is the same panel that heard the
8 other appeal: Past President, Present
9 President and Present Chief Justice and
10 the result of the appeal is that the
11 appeal against Miss Mangatal's Judgment
12 is dismissed, cost thrown away to the
13 first respondent, that is to FIS,
14 including one day hearing cost to be
15 agreed at. Cost thrown away to the third
16 respondents to be agreed or a chance.
17 Second and third respondents being my
18 clients.

19 Mr. Chairman, the last document I wish
20 to take the witness to is, DEBTOR, did
21 you get a registered notice from my
22 clients on the 5th? DEBTOR, do you
23 recall getting a registered notice from
24 my client dated the 5th day of
25 March 2008 in relation to the

1 indebtedness secured by the mortgages
2 over Volume xxxx Folio xxx and Volume
3 xxxx Folio xxx?
4 A: No.
5 Q: Perhaps this will refresh your memory.
6 Mr. Deperalto could you...
7 (Document shown to witness)
8 A: I think I have seen this, yes.
9 Q: These are the notices in respect of
10 mortgages, DEBTOR, that you have said -
11 did I hear you correctly say you have
12 seen it?
13 A: I think I have seen it, yes.
14 MRS PHILLIPS: May we mark this notice AS...
15 COMM BOGLE: 41.
16 MRS PHILLIPS: 41?
17 COMM BOGLE: That is what I have.
18 MRS PHILLIPS: Now DEBTOR, you agree with me that my
19 client, Jamaican Redevelopment Foundation
20 Inc., is not a party to your action
21 against -- sorry, is not a party to the
22 action brought against you by Eagle
23 Merchant Bank?
24 A: Eagle Merchant Bank?
25 Q: Yes.

1 A: No, they are not.

2 Q: They are not. And Financial

3 Institutions Services Limited is not

4 party to the action brought against you

5 by Eagle Merchant Bank, right?

6 A: No.

7 MRS PHILLIPS: Unless I can be of any further

8 assistance to the Tribunal that ends the

9 issue of the cross-examination on behalf

10 of the Jamaican Redevelopment

11 Foundation.

12 COMM BOGLE: Okay. Any other attorney, no?

13 MR. MOODIE: We have no questions of this witness at

14 this time.

15 COMM BOGLE: Okay, thank you. Miss Clarke?

16 MR. CLARKE: I have my own difficulty. Having regard

17 to the fact that these documents are

18 being put and in light of the witness's

19 posture I do not believe I have any

20 questions for re-examination at this

21 time.

22 COMM BOGLE: Okay, thank you. Do you have any

23 questions, Mr. Ross?

24 DEBTOR: Mr. Chairman...

25 COMM BOGLE: Just a minute, DEBTOR.

1 COMM. ROSS: Mrs. Minott-Phillips, the last document
2 that you tendered...

3 MRS PHILLIPS: The Registered Notice?

4 COMM. ROSS: ...refers to a mortgage of xxx King
5 Street. There was reference earlier to
6 a property that was sold, I thought it
7 was the property on King Street, is that
8 correct?

9 MRS. PHILLIPS: No, or it was a confusing - there is no
10 reference to this property being sold.
11 There was another property at xxx King
12 Street which was owned by DEBTOR
13 COMPANY#1, that property was sold and the
14 proceeds of sale attached to Eagle
15 Merchant Bank. This is a neighboring
16 property which was mortgaged to Century
17 National Bank.

18 COMM. ROSS: Okay.

19 COMM BOGLE: All right, DEBTOR, you wanted to say
20 something?

21 A: Yes, sir.

22 COMM BOGLE: You have two minutes and I am limiting
23 you to two minutes because it's now
24 almost 5 o'clock and you have had one
25 full day plus today.

1 A: All that time by her was my day.
2 COMM BOGLE: No, no, this is not the first day

3 DEBTOR. So you have two minutes if you
4 have anything to say that you have not
5 said before.

6 A: Mr. Chairman, I want to say that I don't
7 believe I am fairly treated by this
8 Commission. That you have allowed length
9 of time for counsel to testify and to
10 bring up matters in the case and to show
11 the results from that but I have not
12 been able to counter-balance that with
13 the fact that that Judgement against me
14 was obtained on false representation.
15 And that I have put before this
16 Commission evidence where the debt has
17 been paid to the extent that I became
18 barred and was restrained from making it
19 clear that the debt was paid. The
20 Promissory Note relates not to this debt
21 but relates to the guarantees by Scotia
22 Bank and by Telephone Company and that -
23 we gave you a schedule where the demand
24 loan has been paid off. You have got it,
25 they have got it but what they

1 represented to the court is false
2 information which shows that they misled
3 the court. That case was brought in
4 2003 and it's now 2011 and they have in
5 a way, I don't know how they managed
6 that, we have not had a trial where all
7 the evidence can be presented. They have
8 gone through the court several rounds up
9 to the Court of Appeal and a fixed case
10 that was filed we have not had a case
11 management hearing on that fixed case,
12 we have not heard it.

13 COMM BOGLE: Thank you, DEBTOR, all that you have
14 said a while ago we heard before.

15 A: Yes.

16 COMM BOGLE: Therefore, I take it there is nothing
17 new before this Commission and therefore
18 thank you ladies and gentlemen.
19 This Commission of Enquiry is now
20 adjourned until tomorrow morning at 9:30
21 a.m. Thank you very much.

22

23 **ADJOURNMENT TAKEN AT 5:05 P.M.**

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25