

1 CHAIRMAN: What is the heading?

2 MR. WONG KEN: The heading of the document is

3 ~~DEBTORCOMPANY~~ NCB Promissory Notes,

•1

5 6 CHAIRMAN: Entered as
Exhibit...

7 MR. WONG KEN: Exhibit 13.

8 CHAIRMAN: Entered as Exhibit 13.

9 MR. WONG KEN: I think it would be necessary also --
10 perhaps it would be correct to have it
11 entered for identification by a member
12 of Jamaican Redevelopment Foundation.

13 MRS. PHILLIPS: You can put it in evidence if you want,
14 we have no problem.

15 CHAIRMAN: It is part of your submission.

16 MR. WONG KEN: Well, Commissioner, the problem is that
17 it was not addressed to DEBTOR from
18 his own evidence. I don't think he can
19 clearly say who generated the document
20 or the source of the document.

21 CHAIRMAN: Mr. Wong Ken, I think it is proper
22 though for DEBTOR to enter it.

23 MR. WONG KEN: Mr. Garcia has pointed out that it be
24 entered as a document that DEBTOR has
25 received already.

1 CHAIRMAN: Right.

MR. WONG KEN: I am happy with that.

3 CHAIRMAN: DEBTOR, continue.

am a em

5 My family home was sold on March 4, 2008 at

6 Private Treaty.

7 80. I tender as an exhibit a copy of a letter

8 from Jamaican Redevelopment Foundation

Limited dated April 9, 2008

10

and I request

that it be marked as DEBTOR18.

11 That letter informed me that....

12 CHAIRMAN: MB.14.

14 13 A:

15 Sorry.

16 That letter

17 informed me after applying the sale

18 proceeds of

19 \$XX MILLION against DEBTORCOMPANY's

20 account, the balance owing is \$XX MILLION.

21 As I stated earlier Mr. Commissioners, I have

22 lost everything that I owned; I no longer own

23 any real estate and as I indicated earlier on

24 I have to be getting up to go out to earn a

living to sustain life. So I don't know where

I am going to get money from to pay the \$XX MILLION.

81. Dr. Davis stated in his testimony

1 that owners of family homes that were

2 given to the bank...

3 MR. WONG KEN: Commissioners, could the letter of April
4 9, 2008 from Jamaican Redevelopment
5 Foundation be entered as exhibit DEBTOR14.

6 CHAIRMAN: Yes, so entered.

7 MR. WONG KEN: DEBTOR, I noticed a letter attached
8 to that, at least my copy from Jamaican
9 Redevelopment Foundation April 18, 2007.
10 I don't think it is dealt with in the
11 witness statement.

12 A: Yes.

13 MR. WONG KEN: Could you explain what that letter is
14 about?

15 A: The one at July 13, 2007?

16 MR. WONG KEN: Yes.

17 A: This letter was addressed to Alton E.
18 Morgan & Company, who by then I had then
19 gone to, which is another in the chain
20 of attorneys I have been going to try
21 and solve my problem and this letter is
22 addressed to that attorney advising the
23 sale of the property at 34 Grosvenor
24 Terrace, which is my family home.

25 MR. WONG KEN: Commission, may we just enter that

1 letter July 13, 2007 as DEBTOR15 please?

2 CHAIRMAN: Yes.

3 MR. WONG KEN: DEBTOR, could you please read the last
paragraph commencing with the word
5 'under'.

6 A: What number?

7 MR. WONG KEN: The letter dated July 13, 2007.

8 DEBTOR: You want me read the letter again?

9 CHAIRMAN: The last paragraph.

10 A: "Under the Power of Sale contained in
11 the mortgages, the property went to
12 auction May 3, 2007 but an acceptable
13 offer was not received. The property is
14 for sale at Private Treaty. Kindly
15 refer any prospective purchasers to our
16 office to the attention of OFFICER1
17 or ATTORNEY."

18 MR. WONG KEN: And had you been aware of any persons
19 who were interested in the purchase of
20 that property?

21 A: Yes, several people came to the home
22 while I was living there and every
23 person that came enquired of me why this
24 house is being sold and I explained to
25 them the reasons why the thing is up for

1 sale by Private Treaty. And if my
2 memory serves me right there were some
3 twelve people that came initially and
4 they were away from home when on a sudden
5 one afternoon I was at the back of my yard
6 fixing my car - I am a hobby mechanic, so I
7 get relief from fixing vehicles. So I was all
8 in dirty clothes and my wife came to me and
9 said there was somebody at the gate who wants
10 to talk to you. When I went to the gate this
11 individual identified himself and said to me,
12 we are the new owners of the home." I said,
13 "How can you be the new owners of the home,
14 I haven't sold my house." To which he
15 responded that he bought it by Private Treaty
16 and he wants to come in to inspect the house."
17 I said, "you are not putting your foot in here
18 because I didn't sell my house to you or give
19 authority for my house to be sold." And in
20 discussion he said to me, "I am sorry, I didn't
21 come to speak with you before but what I will
22 do is get a hold of my attorney to see if I
23 can
24

1 withdraw the offer and I will call you

2 back and tell you." Well, true to his

~~word, he called me back within two hours to say that the attorney had to~~ 7 in that

3 it was too late for him to withdraw the
4 offer; so he had to proceed with the sale.

5 After hearing that I then the following day

6 got in touch with my attorney and started

7 to pursue avenues to block the sale of the

8 house and I subsequently ended up going to

9 court backward and forward wherein when the

10 matter was heard by the court, the court

11 figured that the whole thing is fait

12 accompli so they had given three months to
13 vacate.

14 Now, at my home which I have been resident

15 there for 34 years, my youngest child when

16 we came to Jamaica and set up home she was

17 just five years old and giving me that time

18 there was no way I could move out because

19 my home was both office and residence. I had

20 equivalent, between equipment and

21 materials, I had the equivalent of some

22 Twelve to Fifteen

23

24

1 Million dollars worth of things in the
2 back of my yard, and when I went to the
3 court asking for more time to find
4 some where to move the court **•i•** no grant
5 me the time, telling me I have to vacate.
6 Well, I went to court on the Friday and the
7 Wednesday morning this person sent bailiff
8 who came with five policemen and ten people
9 and come and say, "you got to come out now."
10 I was so traumatized that I sat in my family
11 room, my wife came and said to me, "there are
12 some people at the gate." And I said, "you go
13 and talk to them, I am not going to talk to
14 anybody because I don't know what I am going
15 to do. I sat there transfixed. She went out,
16 spoke to the person, brought them into the
17 area and while he identified himself as to who
18 he is and the purpose of them being there he
19 looked through the back porch towards the
20 back of the yard and said, "hold a second,
21 what is it you have 'round there?" I said I
22 have five vehicles, two backhoes, a lot of
23
24
25

1 construction material. He said, "but
2 you can't move out of here today." I
3 said, "that's it. I went to court to ask
4 or more time o e a in
5 somewhere to pick up as a resident and to find
6 somewhere to put my office." He said, "hold
7 on, I soon come." And he went outside and made
8 a phone call. I don't know who he called, but
9 he came back and said to me, "I got you two
10 more weeks, but guess what, we have to clear
11 out the whole of upstairs and put it outside.
12 So I said to him, "do me a favour, don't put
13 my things on the road, put it on the lawn
14 because I have a very big lawn. I said, I will
15 send for some trucks and as they come out I
16 will put them on the truck and hopefully I
17 can find somewhere to put them." In the rush
18 of things I forgot that I had a truck at the
19 back of my yard, and while I am waiting on
20 the truck to come they started putting the
21 things out and just pitching them out. I
22 remember that I owned a truck which is parked
23 up at the
24

1

back of my home and so I went for it and

2

put it out the front and started to load

3

the things on

5 6

to the truck until three

7 8

more trucks came. Now, what they in fact

9

did was to clear out the whole of upstairs,

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put it outside and said, "based on

11

instructions they have to show an indication

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that I have been evicted. There were a lot of

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things upstairs which were sensitive to being

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put

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outside so I requested of him to put them

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downstairs, and he agreed to put them

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downstairs.

18

Now, after that was done the next shock came

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to me was when he said to me, "while you have

20

two weeks to vacate, you cannot be here

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between the hours of 6:00 p.m. and 7:00 a.m.

22

So I am leaving my home with all these

23

valuables round there, equipment, motor

vehicles

24

construction material at the mercy of

25

/continued...

somebody who is going to be watching my house while I am gone away.

1 In the process of all of that I did not know
2 where I was going because I did not have
3 anywhere to go to. I was

4
5 road to stay nearby and before that was
6 finalized that is what happened.
7 Fortunate for me,. in the rush of things I
8 had forgotten that I had
9 responsibility for a property owned by a
10 cousin of mine which was locked up for about
11 five years and I suddenly
12 remembered that I have this property up
13 there so I moved the things, some outside
14 and some inside and that is where I slept.
15 It took me two weeks to the day to clear out
16 everything out of the property and in my
17 house. A whole lot of things were destroyed.
18 Some things were left out there. There was
19 no place to put them and the rain had
20 destroyed a lot of things, personal
21 possessions. In the process of that when I
22 started to look for things that I know I had
23 they disappeared and I realized that while
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all of this was going on, the people who they brought to get us out of the house was stealing our things, a lot of

some of the trauma that I had to go through in terms of all that sordid affair.

It is not that I was not prepared to pay back what I borrowed because over the years that I have been borrowing loans and if you look at the titles that cover these properties you will see incidents of lots of money being borrowed. It is discharged, it is borrowed again and discharged. I am not a person to run away from my obligations so to me this whole damn thing was just a whole injustice, not to me personally, but brought down on the land, and we have got to fix it.

Thank you, DEBTOR. And on that note we will recess, go for lunch. It is now almost 1 o'clock and therefore, we will return at 2:00. We will have lunch for one hour and return at 2:00.

CHAIRMAN:

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ON RESUMPTION AT 2:05 P.M.

CHAIRMAN:

The microphone seems to have left us
somewhere along the line, it is not yet
back from lunch, I don't know if we can
proceed until it is back from lunch, we
can project our voices to be heard, can
we try, is that okay by everyone? So we
are back in session therefore, and I
will ask DEBTOR to resume your seat.
DEBTOR, I think you were somewhere at
about 78 with us.

A:

Okay.

CHAIRMAN:

Or eighty I think it might have been.

A:

Item 80.

CHAIRMAN:

You may continue.

A:

Okay item 81;

Dr. Davis stated *in his*

testimony that owners of family

homes that were given to the

**banks as collaterals were given
a window of opportunity to re-**

negotiate their *loan* payments.

**We were never offered any window
of opportunity.**

On August 14, 2008 at 7 a.m. our

1 home was stormed into by
2 bailiffs, police and movers and we
3 4 were given until 11 a.m. to move
5 6 out. We had nowhere to go then.
7 8 An examination of my titles
9 registered as follows:
10 Volume/Folio (PROPERTY1),
11 Volume/Folio (PROPERTY2);
12 Volume/Folio (PROPERTY3)
13 Disclose that the mortgages
14 thereon were transferred from
15 Mutual Security Bank Limited to
16 NCB, Refin Trust and to Jamaican
17 Redevelopment Foundation on the
18 1st of December, 2006, and at
19 that time Mutual Security Bank
20 ceased to exist as a Bank and did
21 not have the capacity to execute
22 the Transfers. To the extent
23 that the transfer of mortgages
24 occurred at a time when Mutual
25 Security Bank Limited was not a
legal entity at the date that the
transfers

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I am alluding to in the next paragraph, item 84, to seek the Court's, the Supreme Court's opinion, as to whether this matter is in fact legal or not legal because I am of this opinion that it isn't legal.

MR. WONG KEN: I am not sure I understand DEBTOR,

you said that you were of the opinion that the high interest rate that Mutual Security Bank charged could no longer be charged?

A: That's right.

Q: Could you repeat that for me?

A: The fact that the bank no longer exist as a bank, it means that whatever agreement I had with them, I don't see how they could be transferring to other banks or other institutions an agreement that I did not sign agreeing for them to pass over to another bank, I just don't understand that.

Q: I am understanding you to say that Mutual Security Bank did not exist as a bank when?

A: When all of these titles, all of these

1

mortgages were transferred.

2

Q:

DEBTOR, I am going to show you the

copy of a title registered at Volume/Folio

(PROPERTY3). Commissioners I am referring

4

to the copy of title registered at

5

Volume/Folio (PROPERTY3) that was in the

6

bundle of documents provided with

8

DEBTOR's statement and I am asking

9

DEBTOR if that is a copy of the title

10

for your family home at KINGSTON?

11

12

A:

Yes, this is in fact a true copy of the

13

title.

14

CHAIRMAN:

DEBTOR, the mike is back from lunch

15

so you could speak into the microphone.

16

A:

Yes, this is in fact a true copy of the

17

property at KINGSTON and may

18

I point out that this is just one of

19

four titles that was pledged to the bank

20

for guaranteeing all these loans that I

21

spoke about earlier in my presentation.

22

Q:

Could that copy title be entered as DEBTOR16

23

please?

24

CHAIRMAN:

So entered.

25

Q:

DEBTOR, I am drawing your attention

1 to the third page of that title, at the
2 top of the page. You will see a
miscellaneous entry, Mutual Security
4 changed its name to MSB Limited on the
5 21st of October 1997?

6 A: Right.

7 Q: I am trying to determine from you what
8 lead you to the conclusion or the
9 observation that Mutual Security Bank
10 ceased operating as a bank and what is
11 your understanding of that?

12 A: Because in -- I think, I have
13 correspondence here that I think I had
14 presented before that Mutual Security
15 Bank no longer existed and I think I
16 expanded on that because Mutual Life
17 Insurance was destroyed, I use the word
18 destroyed, it no longer existed and at
19 the time NCB were the major shareholders
20 of the insurance portfolio, it stood to
21 reason that Mutual Security Bank which
22 was part of Mutual Life Insurance and as
23 far as my understanding goes, Mutual
24 Security turned over the ownership from
25 Mutual Security to NCB or maybe NCB took

1 over Mutual Security, I am not sure of
2 the implication of what happened either.

Q: What I understand you to be saying upon

4 NCB taking over Mutual Security Bank,
5 Mutual Security Bank ceased operating as
6 a bank?

7 A: As a bank, yes.

8 Q: And what I understood you to be saying
9 and I really want to have it clear in my
10 own head is that when not a bank, Mutual
11 Security could not undertake the
12 functions of a bank?

13 A: That is correct, and under what
14 authority were they acting if they were
15 no longer a bank and shouldn't I be
16 called in to be told, look we no longer
17 exist as a bank, what do we do with your
18 assets or something like that but none
19 of these things were done.

20 Q: And the transactions and activities
21 would include the charging of interest?

22 A: At the time, yes, there were interests
23 up to the time that the bank was in
24 existence, but I signed a commitment to
25 Mutual Security Bank, I didn't sign any

1 commitment to NCB because as I said
earlier on, prior to joining Mutual

Security Bank I was with NCB and I was very unhappy with the banking situation

4 and I shifted from NCB to Mutual Security
5 Bank not realizing that three years down the
6 road, four years down the

8 road I would be back in

this same

9 predicament.

10 Q: DEBTOR, the entry I referred you to
11 at the top of page 3 of the mortgage
12 where it appears that the mortgages
13 formally held by Mutual Security Bank
14 were transferred to National Commercial
15 Bank, you see that second entry.

16 A: Yes.

17 Q: On the 1st of December 2006?

18 A: And simultaneously the same thing
19 happened to two other entities.

20 Q: I think you are referring to the other
21 two entities on that?

22 A: Yes.

23 Q: You are saying on the 1st of December
24 2006 the mortgages from Mutual Security
25 Bank were first transferred to NCB then

1 to Refin?

2 A: Same day to Refin Trust, same day to
Jamaican Redevelopment, al

4 succession.

5 4: The question I want to ask though, in your
6 earlier statement, in your earlier evidence
7 where you say that Mutual Security Bank
8 having lost or having
9 ceased operating as a bank was no longer
10 entitled to undertake the activities of
11 a bank, are you then saying that
12 certainly up to 2006 when those
13 mortgages were transferred, Mutual
14 Security Bank in whose name the
15 mortgages were registered, was not
16 entitled to charge interest?

17 A: I saying that, yes.

18 Q: Your earlier evidence this morning
19 indicated that you had borrowed money at
20 a certain percentage over current
21 minimum?

22 A: Yes.

23 Q: You recall that?

24 A: Yes, I remember, yes.

25 Q: And those mortgages related to the loan

1 Q: Very well, DEBTOR, thank you very
2 much.

3 CHAIRMAN: M Wong Ken I think I should address
4
5 question, the mortgages state a
6 principal amount with interest, is there any
7 limit on the amount of interest? 8

9 MR. WONG KEN: I think Commissioner you are referring
10 to how the mortgage is registered on the
11 title. That isn't necessarily how the
12 interest is reflected on the mortgage
13 instrument itself. Typically the
14 mortgage in that era would have said
15 something along the line of four percent
16 above current minimum and of course it
17 would refer to the current minimum of
18 the bank or institution that has loaned
19 the fund. The line of question I
20 embarked upon was to try and determine
21 how the interest was stipulated on the
22 mortgage, how is that prescribed,
23 because surely, if Mutual Security Bank
24 could not undertake the functions of a
25 bank and ceased operating as a bank,

1 then it wouldn't have had a current minimum
2 above which a percentage could

have been imposed, but then there are

5 surrounding that, it's certainly not an easy
6 argument, but I heard DEBTOR speak about
7 asking the Commission to seek a declaration
8 from the court in that regard and I think it
9 is an
10 important request, I think it's a legal issue
11 that needs to be settled, because if it turns
12 out that Mutual Security had no minimum
13 interest, no current minimum and if it turns
14 out that NCB couldn't take the benefit of the
15 mortgage
16 vis-a-vis the interest by some kind of an
17 assignment, then that would throw the whole
18 calculation of interest completely out of
19 wok. It would make the interest claimed by
20 FINSAC and everybody else completely
21 inaccurate and would
22 certainly require an accounting to try and
23 sort that out, in other words, the whole
24 basis, the whole premise on which houses
were sold, properties were sold

1 for outstanding debts would really be in
2 question and more importantly why an
3 accounting would be necessary. As I

5 arguments that would go back and forth but
6 it is an issue that I think the Supreme
7 Court need to make a ruling on.

8

9 COMM ROSS: Just a follow up, is there a limit on
10 the time period on which this interest
11 would accrue?

12 A: Again -- well as long as the mortgage
13 subsist the interest would run according
14 to the instrument, the mortgage is
15 nothing more than a contract, so it
16 would run pursuant to the terms of the
17 contract.

18

19 CHAIRMAN: Thank you Mr. Wong Ken. Any counsel
20 would like to ask questions of
21 DEBTOR?

22 CROSS-EXAMINATION BY COUNSEL MR. GARCIA

23 MR. GARCIA: Yes Commissioner if I may go first.
24 DEBTOR, your evidence contain a
25 number of conclusions, and I want to ask

1 you about one of them and it relates
2 actually to the status of Mutual

Security Bank. Is it that you are

5 to be a bank or ceased to be a legal
6 entity?

7 A: Ceased to be both a bank and a legal
8 entity.

9 Q: Do you have documentary evidence of this
10 ceasing to be a legal entity?

11 A: I don't have documentary evidence but if
12 you have an institution that is
13 operating as such and one has entered
14 into negotiations with that entity and
15 it no longer exist, I am of the opinion
16 that something is not making sense here.

17 Q: Are you aware of Mutual Security Bank
18 Limited having changed its name to MSB
19 Limited?

20 A: Just being made aware by looking at this
21 title here.

22 Q: You see that it is reflected on the title?

Yes.

23

Are you aware of there being an

24

A:

25

Q:

1 instrument by which the assets of Mutual
2 Security bank were vested in National
3 Commercial Bank?

5 Q: So you can neither speak to the existence
6 nor non-existence of such a document?

7 8 A: Yes.

9 Q: Now, with respect to your concerns
10 regarding the debts which are the
11 subject of your evidence, is it correct
12 that you have commenced a claim in the
13 Supreme Court in relation to these
14 debts?

15 A: I don't remember right now whether that
16 claim is still active or not active, I
17 don't know.

18 Q: A claim perhaps filed in 2008?

19 A: Don't remember.

20 Q: And you wouldn't also remember that it
21 is set for trial in February, 2011?

22 A: Not aware of what.

23 Q: I see?

Because the attorneys, I have been going through so many different

24 A: attorneys, and

25

1

the last attorney that I had excused himself from the

2

whole entire proceedings and I am really not sure

3

5

Q:

Now, earlier in your evidence you spoke of requesting statements, I believe you indicated that you had requested statements of the accounts from NCB, is that correct?

6

7

8

9

10

A:

Right.

11

Q:

Can you say when those statements were requested by you?

12

13

A:

Subject to me checking my files for correspondence, I can't tell you now what dates they were.

14

15

16

Q:

You would have made these requests in writing?

17

18

A:

Yes.

19

Q:

And would you be able to provide copies of these correspondence?

20

21

A:

Yes.

22

23

CHAIRMAN: 24

25

He did promise to locate all the letters requesting statements from the various

1 find them to submit them. 2

MR. GARCIA: am grateful, sir. Now, could I direct

DEBTOR9A to C?

5 Which one is that?

6 A: And DEBTOR10, DEBTOR9A, DEBTOR9B and

7 4: DEBTOR9C were the statements that you had
8 received from National Commercial Bank

^ Jamaica Limited

10 and Exhibit DEBTOR10 was the letter dated

11 January 27, 1998 from National

12 Commercial Bank Jamaica Limited to Brown

13 Reid and Associates who I believe you

14 said were your auditors at the time?

15 A: Yes.

16 Q: Now in your evidence you had noted the

17 difference in the balances as

18 communicated by the statement?

19 A: Right.

20 Q: As opposed to the letter from National

21 Commercial Bank to the auditors.

22 A: Right.

23 Q: Could the difference in the date of the statement as opposed to

24 the date of the letter account for the

25 difference in the

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figures?

Statement

date on the

letter is...

Am I correct

that the

letter is

giving

Right.

And am I also

correct that

the

statement

date for

each of the

statement is

30th of

September

1998?

Yes, it is

but...

Those dates

being over a

year-and-a-

half apart?

But if you look at the statement it says here

date opened the fifth of the second 1997.

But the statement is at a particular

date, is that correct.

The bank statement?

Yes?

Yes.

Which is over a year-and-a-half after

the date of the letter?

Right. Now what I had a problem with, that

the amounts that were converted to demand

loans came straight from my current

account which brought it to

1 zero. Now in the space of converting what was
on my current account to demand

loans and subsequently an account was

5 I am at a loss to figure out where did all
6 of this interest come from, this is one of
7 the things I am trying to analyze or trying
8 to find out, where and how could -- this thing
is saying here that

10 \$XX Million was transferred to a demand
11 loan straight from the current account
12 which reflected that balance and then
13 all of a sudden, I am paying and all of
14 a sudden I am now seeing that there is
15 this amount of interest unpaid, where
16 did it come from and what was the basis
17 of calculating this interest, that has
18 been my contention all the time.

Q: Did you receive any statement in
20 response to your request from anyone?

22 A: This is only
23 documentation I got in
24 terms of what is happening in terms of
25 Q: payment to the bank from the time the

thing was converted to a demand loan.
So you never received any statement

1 other than those documents from anyone?

2 A: Yes, other than these three pieces.

3 Q: Can I ask you a question about something

5 signed from time to time in respect of the
6 debts you have indicated were outstanding
7 to National Commercial Bank and later to
8 other persons, have you ever signed any of
- the documents

10 without..

11 A: One second, what documents are you
12 referring to?

13 Q: The documents you have executed, there
14 are a number of documents in the bundle
15 including some documents you have signed
16 and what I want to ask you is whether
17 you have signed any of these documents
18 without agreeing to the contents of what
19 you were signing to?

20 A: Which document in particular you are
21 talking about?

22 Q: Any of them?

23 A: Well whatever documents that i have, *that I have*
24 signed to, yes I am aware of what is in it.

--

4: Thank you. Now, can I take you to Exhibits
2 DEBTOR5, DEBTOR6, DEBTOR7? Which ones are
3 those?

5 National Commercial Bank Jamaica Limited and
6 those were executed by you on behalf of
7 DEBTORCOMPANY.

8 Is that correct?

9 A: That is correct, yes.

10 Q: And did those promissory notes at the
11 time that you signed them correctly
12 reflect the amounts outstanding to
13 National Commercial Bank Jamaica
14 Limited?

15 A: No, it reflected the amount that was on
16 the bank statement, this is where this
17 information came from.

18 Q: And you were not at the time disputing
19 the accuracy of those sums?

20 A: I was disputing the accuracy of the
21 things but as I had mentioned earlier on I
22 signed these things under duress and I am
23 going to explain why I said I signed these
24 under duress. When on a Friday afternoon
-- where you have fifty, seventy

1 workers to pay a pay bill and you are without
funds and you go to the bank for

assistance in paying your pay bill all

5 sign at the last minute, and I do recall on
6 many occasions I signed documents under those
7 situations, so as able me to meet my pay bill.

9 Q: And so at the time, you agree, that
10 there were sums outstanding?

11 A: There were sums but not the quantum, I
12 didn't agree with the quantum.

13 Q: But not the amount stated. And among
14 the documents, I don't see anything in
15 which you had indicated any dispute with
16 the quantum at the time?

17 A: As mentioned earlier on, I have
18 correspondence wherein I have been
19 writing disagreeing with the quantum of
20 funds owed and I will present those as
21 soon as I find them to the Commission.

22 Q: Perhaps I could ask Commissioners that I be
permitted to ask further questions upon seeing those correspondence. I have no
23 further questions at this time.

24

1 CHAIRMAN:

25

2

3

~~the assets of Mutual Security to NCB.~~

5 MR. GARCIA:

6

7 CHAIRMAN:

8

9

10

11

12

13 MR. WONG KEN:

14

15

16 MR. GARCIA:

17

18

19 MRS. PHILLIPS:

20 A:

21 Q:

22

23

24

Just before Mrs.
Phillips, could you
locate the copy of
the document
vesting

I could do that.

And as I mentioned
last week witnesses
who come before this
Commission they are
on notice that they
can be recalled in
which case on recall
they will be subject
to cross
questioning, to
answer your last
question.

Might I ask that
Mr. Garcia present
me with a copy the
same time he is
providing the

Commission.

Yes.

CROSS-EXAMINATION BY COUNSEL MRS.

MINOTT-PHILLIPS

Good afternoon DEBTOR.

Good afternoon to you.

Going back to your witness statement for a
moment, would you agree with me that there
is no reference to Jamaican Redevelopment
Foundation Incorporated before Paragraph
60?

1 A: Yes.

2 Q: And you would also agree with me, based on
DEBTOR10A that you first became aware of

5 in 2002?

6 A: Right.

7 Q: Now, my friend Mr. Garcia asked you whether
8 you had brought an action in the Court in
^ relation to the debts that you

10 are complaining about now?

1 A: Yes.

2 Q: And you said you didn't remember?

3 A: Yes.

4 Q: Would you look for me at Pages 1 to 3 of
15 this document and tell me if that is
16 your signature on page 3.

17 (Document shown to witness)

8 A: Yes this is my signature.

9 Q:

0 MRS. PHILLIPS: May I approach.

21 (Document handed to Chairman)

2 CHAIRMAN: Could you at your earliest present a
23 copy of at least that to us, pages 1-3.

2 Q: Certainly Commissioner.

2 MRS. PHILLIPS: Can the record show that I have shown

1 the witness a Fixed Date Claim Form in
2 claim number HCV between DEBTOR and
3 Jamaican Redevelopment

5 April 2008. Having seen that DEBTOR, do you
6 now recall that the matter about which you
7 are speaking is the subject of litigation
8 before the Supreme Court of Jamaica?

Q A: Yes I am, based on what you
showed me

11 there.

12 Q: And will you accept that the matter is
13 scheduled to be tried on the 16th of

14 February, 2011?

15 A: I am just being made aware of that, I am
16 not aware of it.

17 Q: But you are aware that it has not yet
18 been tried?

19 A: As far as memory serves me, the last
20 attorney that I had engaged was dealing

21 with all matters relating to Jamaican Redevelopment
22 Foundation and as of about, if memory
23 serves me right, six months ago he no
24 longer acts on my behalf and I do not have
25 an attorney

1

that is dealing with the matter of

2

Jamaican Redevelopment Foundation.

3

Quite frankly from the moment I lost

5

6

7

Q:

the last remaining piece of asset that I had, I had just dismissed everything. Would it be more accurate to say

8

9

10

DEBTOR that on the 12th of May, 2010 the

11

Supreme Court of Jamaica ordered that the

12

attorneys representing you have their names

13

A:

removed from the record as representing

14

Q:

you?

15

Can you repeat that?

16

Would it be more accurate to say that on the

17

12th of May, 2010 the Supreme Court of

18

Jamaica ordered that the attorneys

19

representing you, namely Crafton S. Miller

20

and Company, be allowed to remove their

21

A:

names from the record as representing you

22

MRS. PHILLIPS:

in the proceedings? Yes, I am aware.

23

May I approach.

24

(Document handed to Commissioners)

25

Commissioners, let me say that I hope you will not look at me askance for

1 having only one copy of these but I received
2 the bundle from the Secretariat
yesterday afternoon after lunch and it

5 to have them copied and then sent to my client
6 and then get instructions and my clients are
7 represented in that action by other
8 attorneys so I had to then get those other
9 attorneys to copy the bundle and send it to
10 me so I could be prepared today which is why
11 I only have one copy. But you will as early
as possible get copies to me.

12 CHAIRMAN:

14

15 MRS. PHILLIPS: And in future if I were to receive the
16 , documents in a timely way that certainly
17 would leave me more time to do that. 18

19 CHAIRMAN: Are you therefore putting these in
20 evidence, are you submitting them? 21

22 MRS. PHILLIPS: No, he has accepted what I am saying.

It is in evidence because it is his oral evidence that he accepts that the court
so ordered at this time date.

23

24

25

2 CHAIRMAN: In which case I will have them tendered.

5

6 CHAIRMAN: We need to have those marked and
7

8
9 MRS. PHILLIPS: Certainly if the Commission wishes so.

10 You wish to record the Fixed Date Claim
11 Form as?

12

13 CHAIRMAN: DEBTOR17 for the Fixed Date Claim.

14

15 MRS. PHILLIPS: Could you call that 17 because there is
16 an amended Fixed Date Claim Form, since
17 you are taking the Fixed Date Claim
18 Form, for completeness you may also want
19 to see the amended Fixed Date Claim
20 Form, that would be 17B and then the
21 order that was made on the 12th of May
22 2010.

23

24 CHAIRMAN : Would be 18.

25

1 MRS. PHILLIPS:

25

2 Q:

5

6

7 A:

8 Q:

9

10 A:

11

12 Q:

13 A:

14 Q:

15

16 A:

17 Q:

18

19 A:

20 Q:

21

22 A:

23

24 Q:

You would want that

to be 18?

Speaking of

attorneys DEBTOR,

would you agree

with me that you

were

to your

indebtedness and

that of

DEBTORCOMPANY by

Nicholson and

Company in 1998?

Nicholson and

Company?

Yes, by Mr.

Manley

Nicholson

of

Nicholson

and Company

in 1998?

I don't recall

that name at all --

oh yes, yes, I do now.

You now recall?

Yes.

And then you were represented by Betton-
Small Melhado and Company in 2005? Right.

And then you were represented by Alton E
Morgan and Company in 2008?

Right.

And then you were represented by Crafton S
Miller and Company up to 2010?

That is correct and there were attorneys
before the first one you mentioned. And now
you are represented by Mr. Wong Ken?

1 A: No, I am not being represented by him. As
 Q: far as the Commission of Enquiry is
3 concerned?

5 MR. WONG KEN: 6 For the record, I represent the
7 Q: Association of FINSAC'D Entrepreneurs.
8 Thank you for the clarification. Are there
9 any attorneys I missed out along the way?
10 A: No.
11 Q: Going back to Mr. Nicholson...
12
13 CHAIRMAN:
14 You didn't sort of bring to my attention the
15 significance of DEBTOR18, I just don't
16 follow the significance in your line.
17 MRS. PHILLIPS: The witness was speaking about his
18 attorney, he thought it was about six
19 months ago he stopped representing him
20 in the Supreme Court action and I said
21 to be fair to him what really happened was
22 that the court ordered that their names be
23 removed from the record and then I showed
24 him the Court Order, in the interest of
~ ~ complete accuracy.

1 CHAIRMAN:

I just wanted to know exactly what it
2 is.

3

5

his attorney just suddenly stopped
6 representing him, and it reminds me of
7 something, I am grateful for the
8 interjection. Isn't it correct,

8

DEBTOR, there were couple of reasons

9

10

why your

attorneys applied to the court

11

to be allowed to remove their names from

12

the record as representing you, you

13

recall what those reasons were?

14

A:

I take exception to that statement

15

because no attorney has been removed

16

from the case because I am the one that

17

kept changing attorneys because I was

18

not happy with what was happening. Now

19

that you have shown me the document

20

presented from the court on behalf of

22

21

23

Craft

24

on Miller, yes, we did have discussions and

25

he indicated that he was going to withdraw

from the case.

Okay DEBTOR, I have shown the
Commissioners the Court Order which says

1 what it says, and it speaks for itself. If
the Commissioners wish further

3 elucidation on it I am sure they will

5 but for now if you could just direct your
6 attention to my questions. You said in your
7 witness statement, I believe it was earlier
8 on -- sorry, I might be confusing it with
the summary

10 that was sent to me by the Commission
11 yesterday, the witness summary, may I
12 just have a moment Commissioners please?

13 CHAIRMAN: Okay.

14 Q: You said that you kept a record of
15 everything, was that in your evidence
16 somewhere today that you said that,
17 every piece of paper you have kept?

18 A: Right.

19 Q: And that would include the application
20 by your attorneys to remove their names
21 from the record as representing you and
22 the affidavit in support of that
23 application?

24 A: Which attorney you are speaking now?

25 Q: Crafton S Miller and Company?

1 A: Yes.

2 Q: And do you recall that on the 12th day
 of November, 2009 the Supreme Court 0

5 and serve full accounts in respect of your
 6 claim?

7 A: What date was that?

8 Q: The date of the Court Order was the 12th
 9 day of November, 2009?

10 A: No, I don't recall getting that.

11 Q: Do you recall receiving a letter from
 12 Crafton S Miller and Company dated
 13 January 20, 2010 that says.

14 **Dear DEBTOR,**

15 **Re -- and the Supreme Court**

16 **claim number is recited --**

17 **We refer to the above matter,**

18 **please find enclosed letter**

19 **dated January 14 from**

20 **Mr. Charles Piper who is the**

21 **attorney for Jamaican Redevelopment on the**

22 **other side. Kindly let us have the**

23 **statement of accounts to be filed**

24 **before the 28th of February, 2010**

-- **and**

1 2

also your written instructions as soon as possible.

You remember getting that letter from

5 CHAIRMAN: DEBTOR.

6 O: You remember getting that letter from your attorney?

8 A: You are referring to me as Mr. Miller, I
9 don't know who is Mr. Miller, so I did
10 not answer the question.

11 Q: I am so sorry, that was a mistake, I
12 meant DEBTOR, you recall getting a
13 letter from Mr. Miller saying that
14 DEBTOR?

15 A: I think I did but I have to check my
16 file to refresh my memory.

17 Q: But you do agree with me that you didn't
18 tell this Commission anything at all
19 about this action pending in the Supreme
20 Court?

21 A: No, I didn't because as I said...

22 Q: Okay fine, I just wanted to put that on record.

And you had said that you are able to give an
23 account of every payment made by you?

24

1 A: Every payment made...

2 Q: By DEBTORCOMPANY and

A: you? DEBTORCOMPANY and
myself, **yes.**

5

6 be, DEBTOR, to say that you still have not
7 provided that statement of account to the
Supreme Court of Jamaica?

8 A: No, I have not provided the statement
9 because...

10 Q: it is correct for me to say that?

11 A: Yes, it is.

12 Q: Okay thank you. Now DEBTOR, let us
13 look for a moment at the various
14 securities that your company and
15 yourself gave before 1997. Do you
16 recall saying that everything was going
17 very well in your company up until 1997?

18 A: Yes.

19 Q: Do you agree with me that on the 27th of
20 September, 1993 you executed a mortgage
21 over lands

23 registered at Volume/Folio (PROPERTY5)

24 A: of the registered book of titles for

25 Q: \$XXX,000 with interest? Which property

is that?

Volume/Folio (PROPERTY5) of the registered book of

1 titles?

2 A. I don't remember which property you are

3 referring to in terms of the volume and

5 Hold on a second let me see if I can assist

6 you. All that parcel of land, part of

7 Constant Spring in the parish of St. Andrew

8 being lot number XX under plan letter D...

Q A: That is my personal home,
yes.

1 Q: On Constant Spring and being land

12 comprising Certificate of Title

13 registered at Volume/Folio (PROPERTY5).

4 A: Yes.

5 Q: So you accept that you mortgaged it for

16 \$XXX,000?

7 A: Yes.

8 Q: And do you also accept that on the 27th

19 of September, 1993 you gave your

20 personal guarantee of DEBTORCOMPANY's

21 liabilities limited to \$XXX,000 plus

22 interest?

3 A: Yes.

24 4: And do you also accept that on the 23rd of

25 December -- sorry the 28th of

1 December, 1993 you executed a mortgage over lands
2 registered at Volume/Folio (PROPERTY3) for \$X
MILLION with

5 A:

Yes, Z accept that and it's in

6

submission that all of these....

7

Q:

Hold on DEBTOR, we are just dealing with them

8

one a time and there is a lot of them, believe

9

me. Do you accept that

10

on the 28th of December, 1993 you gave

11

your personal guarantee for the

12

liabilities of DEBTORCOMPANY limited to \$X

13

million?

14

A:

Yes, and so as all the other mortgages.

15

Q:

Let us take them one at a time, shall

16

we. Do you accept that on the 6th of

17

May, 1994 you executed a mortgage over

18

land registered at Volume/Folio (PROPERTY1),

19

Volume/Folio (PROPERTY2) and Volume/FOLIO

20

(PROPERTY4) for \$X million with

21

interest?

22

A:

Yes.

23

Q:

And do you accept that you also gave your

24

personal guarantee on the 6th of May, 1994

25

limited to \$X million plus

1 interest? Yes.

2 A: And do you accept that on the 7th of _____

over land registered at Volume/Folio

(PROPERTY3) for \$X Million with interest?

5

Yes.

6

7 A:

8

Q:

And do you accept

that on the 7th of

9

October, 1994 you assigned your life

10

insurance policies number HIJK and

11

ABCD issued by Island Life Insurance

12

Company Limited on your life for the

13

sums of \$XXX,000 and \$X million dollars 14

15

respectively?

16 A:

Yes.

17 Q:

And on that same day October 7, 1994 you
gave your personal guarantee for the

18

liabilities of DEBTORCOMPANY limited to

19

\$X million?

20 A:

That is correct.

21 Q:

And on the 23rd of December, 1994 you gave

your personal guarantee for the liabilities of DEBTORCOMPANY

22

limited to \$X million plus interest?

23

Right.

24

25 A:

1 Q: Correct?
2 A:
3 4: Yes, correct.
4 And on the 20th of February, 1995 you
5
6 A: Volume/Folio (PROPERTY3) for \$X million with
7 Q: interest? Which property is that one?
8 Q: Good, just give me a moment and I will assist
9 you with that? All that parcel of land, part
10 of Constant Spring in the parish of St.
11 Andrew being the lot number XX and the plan
12 letter D of the Constant Spring being the
13 land comprising certificate formerly
14 registered at Volume/Folio (Property3).
15 A: For what amount?
16 Q: \$X million with interest.
17 A: Yes, that is on the 5th of the 5th 1995. That
18 is on the 20th of February, 1995? Yes.
19 Q: And on the 13th of March, 1995 JANEDOE --
20 A: is that your RELATIVE? Yes.
21 Q:
22 A: Mortgaged her property registered at
23 Q: Volume/Folio (property5) of the
24 A: registered book of titles for \$X million
25 Q: with interest?

1 A: Yes.

2 Q: And was that to secure your companies or your
3 debt?

5
6 Q: yes.

7 So you mortgaged your mother's property as
well?

8 A: Yes.

9 Q: And on the 13th of March, 1995 you gave
10 a personal guarantee limited to \$1
11 million plus interest, right?

12 A: Yes.

13 Q: And your mother, presumably at your
14 request, gave her personal guarantee for
15 the liabilities of DEBTORCOMPANY limited to the
16 extent of \$X million plus interest on
17 March 13, 1995?

18 A: She did not give a guarantee.

19 Q: You want to think about that again?

20 A: S am telling you, she did not give a
21 guarantee, she did not write or sign for
22 a guarantee.

23 Q: Continued....

24

25

1 MRS. PHILLIPS: Commissioner, let me move on and if I
2 find it I will come back to it.
3 All of this, all of the above,
4 DEBTOR, all of these securities, were
5 given by you or at your request prior to
6 1995 while *your* company was doing well?

7 A Right.

8 Q And your evidence was that you had a
9 formula which was a quick turn around.
10 I may not be quoting you correctly but
11 you were giving, certainly me, the
12 impression that it didn't matter to you
13 how high the interest rate was at the
14 time because you had a formula that
15 generated cash quickly.

16 A That's not the impression I was giving.

17 Q That is not the impression you meant to
18 give?

19 A No. I was indicating that for you to run
20 a construction business you have to
21 spend a lot of money up front to get the
22 progress of the project going at a fast
23 pace so that the client can pay you to
24 reduce interest burdens at the bank and
25 to reduce all the ancillary costs.

1 A Same thing.

2 Q That is what caused the problem?

3 A Yes.

4 So, the problem was not caused by MSB,
5 NOB, FINSAC or JRF, the problem was
6 caused by you being highly leveraged in
7 a situation where your clients stopped
8 paying you?

9 A The problem was caused and compounded
10 because of the high interest rate that
11 was applicable on the land at the time.

12 Q Now DEBTOR?

13 A Yes.

14 Q You told the Commissioners that you had
15 no difficulty, I believe it was from the
16 first question that the Commissions
17 asked you this morning, were you aware
18 of the interest rate; that you were
19 signing an agreement for an interest
20 rate of 85% per annum?

21 A No, I didn't sign any for 85%.

22 Q I beg to differ?

23 A The highest one that I signed was 4%
24 above prime which is 65%.

25 Q Sorry, I believe it was Commissioner

1 Q That wasn't the intent of what you were
2 conveying when you said that you spoke
3 to JOHNDOE - I believe you
4 referred to him as JOHNNY - and he asked
5 you what was the secret. Was that not
6 your evidence or did I hear you
7 incorrectly?

8 A Because at the time when I had that
9 meeting with the bank, the bank was not
10 aware as to how funding and financing
11 of a construction business went.

12 Q Now CERTAIN COMPANY. You remember them?

13 A Yes.

14 Q Remind us of the year that you entered
15 into your contract with
16 CERTAIN COMPANY?

17 A 1993.

18 Q 1993. So this was long before your
19 company started giving problems?

20 A Well that is what caused the problem in
21 the first place.

22 Q That is what caused the problem?

23 A Yes, because I couldn't collect the
24 money. And XXXXX Limited?

25 Q

1 2

Ross, I think it was, who asked you in relation to Exhibit DEBTOR1; were you aware

that 10% above current minimum now 64% was

4

7/4% and 21% of over current minimum now 64%

5

was 85%, and he actually used figures, and

6

you said, yes, you were aware of what you

7

were signing?

8

A

Okay. Yes I did make that observation.

9

Q

So you had no difficulty entering into

10

an agreement that provided for interest

11

to be paid at 74% and 85%. Do you

12

recall telling the Commissioners that

13

you had no difficulty with that

14

arrangement, this morning, and in fact

15

the other replacement arrangement you

16

said, which is at DEBTOR2 dated December 21,

17

1994 where the interest rate on that is

18

53.7%, you also had no difficulty with

19

that and you also went on to say that

20

your last arrangement with Mutual

21

Security Bank was the one at DEBTOR3 which

22

provided for principal amount of \$XXM

23

and an interest rate of 49%. You

24

remember saying that you had no problem

25

with those?

1 A Yes.

2 Q So DEBTOR, if you had no problem
3 signing an agreement..

4 A I didn't use the word, 'I had no
5 problem'. I said I am aware of what was
6 happening. I did not use that word.

7 Q DEBTOR, you were aware of what was
8 happening and you said that you had no
9 problem because your specialty was in
10 turning around the thing quickly and so
11 much so that JOHNDOE asked you what
12 was the formula, you were so successful
13 at it, so it didn't really give you a
14 problem.

15 A You are taking this thing out of
16 context.

17 Q Am I? I am not sure that I am the person
18 doing that.

19 A When I spoke...
20 DEBTOR, let me go on to my next
21 question. Look at the Promissory Notes
22 that you signed with National Commercial
23 Bank. These are Exhibits DEBTOR5, DEBTOR6
24 and DEBTOR7. The interest rate on those
25 Promissory Notes are 52%, 50% and 45%

1 respectively. If you had no difficulty
2 signing a document that bound you to pay
3 85% per annum, why should we believe
4 that these were signed under duress when
5 it is a mere 52%?

6 CHAIRMAN: I don't know, I do not think that - if
7 we try to remember, I think when he said
8 that he had signed these under duress,
9 it was not in relation to interest rates
10 but he was saying at the time that he
11 was not sure of the amounts in terms of
12 these were to move balances from his
13 current account and those figures he was
14 not sure of the accuracy of them?

15 MRS. PHILLIPS: Thank you for that.

16 A That is correct.

17 MRS. PHILLIPS: Being unsure of the balance is a long
18 way from duress though, Commissioner,
19 that's being unsure.

20 CHAIRMAN: Thats what he said.

21MRS. PHILLIPS: Let's approach it from that angle because I
22 want to explore that too. The last letter
23 DEBTOR3, the commitment letter from Mutual
24 Security Bank was for a principal amount of
25 \$XXM; correct?

1 keep insisting on, the commercial papers
2 that became due which were put into the
3 current account is what was ballooning
4 my balance on the current account.

5 Q Just a minute, DEBTOR. Let's analyse
6 that statement a second because you said
7 that your first world experience makes
8 you understand this better than everyone
9 else.

10 A I didn't say that.

11 Q In my simple way, my understanding of
12 the commercial paper scenario, is that,
13 that is a facility make available to you
14 to try to reduce the interest rate at
15 which you are paying off your debt. So
16 it's a benefit to you if the bank offers
17 you commercial paper, but the bank has
18 to guarantee the repayment of that
19 commercial paper. Is that so?

20 A That is correct, yes.

21 Q And if you discharge your obligations
22 and pay off the commercial paper on time
23 then you agree to the benefit of the low
24 interest rate at the bank?

25 A That is the whole objective of what was

1 money, in my opinion, was incorrect.

2 Q But you didn't pay it though, DEBTOR,

3 because if you had paid it, it wouldn't

4 be a problem; agreed?

5 A Proceed with your next question because you

6 are going in a... You are not the

7 4 Commission.

8 A You are going in a direction...

9 Q DEBTOR...

10 CHAIRMAN: DEBTOR, I think we have to get back

11 some order in here now. Please try and

12 answer the questions.

13 MRS. PHILLIPS: Thank you.

14 If you had paid it, it would not have

15 been a problem; would it, DEBTOR?

16 A I am not going to answer you, you know.

17 CHAIRMAN: DEBTOR, you have to answer the

18 question. You are being asked questions

19 and we want you to answer. So I am

20 instructing you to answer the question.

21 A Yes, if the commercial paper when due

22 was paid, yes.

23 MRS. PHILLIPS: Thank you. I am indebted for your

24 assistance, Commissioner.

25 Now, back to Mr. Nicholson. You would

1 agree that when an attorney represents
2 you he acts as your agent?

3 A Yes, I am aware of that.

4 Q Okay. And did you show the Commission
5 the letter written by Nicholson &
6 Company on your behalf to National
7 Commercial Bank on October 1, 1998?

8 A Which letter is that?

9 Q That is the letter where you are
10 proposing a work out arrangement for a
11 total payment of \$XXM of a
12 compromise sum for your indebtedness on
13 October 1, 1998?

14 A I don't remember that letter neither did
15 I present that to the Commission.

16 Q Alright. I want to be completely fair to
17 you, so let me show it to you.
18 Before Mr. Crofton Miller took his name
19 off the record from representing you,
20 you received an affidavit of Janet
21 Farrow?

22 A I don't remember.

23 Q This is just 2008. You remember things
24 with such clarity from 1973?

25 A For me to tell you, yes or no, I would

1 have to go and look in my files. There
2 is a whole barage of correspondence.

3 Q Let me see if I can refresh your mind.

4 A Quite frankly at this point in time
5 my memory of Nicholson & Company is very
6 hazy. I am not even aware of this and I
7 did not present this letter to the
8 Commission. As a matter of fact I was
9 not even aware that I have such a
10 letter.

11 Q I thought you had everything.

12 CHAIRMAN: May that be marked as DEBTOR19 and that
13 copies be provided for the Commission.
14 And in that letter written by your then
15 attorney on your behalf, you are
16 proposing a work-out plan involving in
17 excess of XX Million,
18 and a part of it to be
19 attributed to principal is XX MILLION
20 and you know in working it out
21 everybody gives and takes a little bit.
22 So each Promissory Note seems entirely
23 consistent with you proposing to pay
24 that as a principal sum in 1998, do you
25 agree?

1 A Yes.

2 Q So you are now agreeing with me that you
3 accepted the figures set out in the
4 Promissory notes exhibited as DEBTOR5,6
5 and 7 with your signature on them?

6 A I am agreeing with the amounts on the
7 Promissory Notes.

8 Q Thank you. And you said, I believe, in
9 answer to my friend, Mr. Garcia, that
10 you were aware of what the Promissory
11 Notes contained in them?

12 A Yes.

13 Q The material set out in each?

14 A Yes.

15 Q And these Promissory Notes state,
16 "interest payable monthly at the rate of
17 'x' percent per annum as well as after
18 as before maturity or such operate as
19 the holder may from time to time charge
20 with interest on unpaid interest at the
21 same rate from the due rate to the date
22 of payment". You are aware that they
23 said that? Well, you just said that you
24 are aware of everything there; correct,
25 including that? Yes?

1 A Yes, yes.

2 Q So, then, DEBTOR, when I add, and my
3 Math is not the best but maybe Mr. Goffe
4 can help me. Oh, here it is. Lets go to
5 DEBTOR8. It is all set out there nicely for
6 us. When we add the principal balances
7 that were recorded by National
8 Commercial Bank in their letter to you
9 that you have exhibited as DEBTOR8 which you
10 now accept as incorrect figures, the
11 total amount due as at June 6, 1997 was
12 AA Million Dollars, do you
13 agree?

14 A Based on the documentation, yes.

15 Q Yes. So, DEBTOR, if you were to see a
16 report in the Sunday Observer of
17 November 29, 2009 that reports your wife
18 as saying that you borrowed BB Million
19 Dollars, that would be incorrect,
20 wouldn't it?

21 A No. The origin of this is that I
22 borrowed \$CCM. That is where it
23 started and what I am referring to.

24 Q But at the date this story was
25 published, when this Commission was

1 sitting in its first dispensation the
2 debt at the time, the debt that you
3 borrowed, greatly exceeded \$XXM by your
4 own admission in your own Promissory
5 Notes; correct?

6 A I have beg to differ. I didn't borrow
7 the money. The amount of money on my
8 commercial paper was converted to a
9 Promissory Note. I didn't borrow it, it was
10 taken from my current account and turned into
11 a Promissory Note. That is entirely
12 different from me borrowing
13 money. I didn't borrow it. If you want
14 to call it 'borrow' then so be it.

15 Q Fortunately for you DEBTOR, the Press
16 only attends during
17 examination-in-chief. They are not
18 interested in any other material
19 apparently, so you don't seem to have
20 much reason for concern.
21 Now, I believe I saw an Affidavit filed
22 by you. Do you remember filing an
23 Affidavit in the Supreme Court on the
24 16th of April, 2008, DEBTOR?

25 A What is it referring to?

1 Q Let me show you.

2 A I filed many Affidavits.

3 Q That is fair and I want to be fair so
4 hold one. This Affidavit. Look at it and
5 see if it is your signature?

6 A Yes, I remember signing it. That is my
7 signature, yes.

8

9 Continued...

10

11

12

13

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25

1 CHAIRMAN: Mrs. Phillips, as usual this is DEBTOR20.
2 MRS. PHILLIPS: Now DEBTOR, do you recall it being your
3 sworn testimony that due to the

4
5 XXXXX Limited and CERTAIN COMPANY, you
6 had, and I am quoting you, 'an excessive
7 overdraft burden'. Was that your sworn
8
9 testimony?
9 A: Yes.
10 Q: And you would agree with me that FINSAC
11 had nothing to do with that?
12 A: As far as I am concerned FINSAC has --
13 because if it was not for the high
14 interest rate..
15 Q: Just a minute. Didn't you say that your
16 problem with CERTAIN COMPANY started in
17 1993?
18 A: Right.
19 Q: Didn't you just say in evidence that
20 FINSAC acquired your debt in 1998?

21 A: Yes.
22 Q: Would you agree with me that your overdraft
23 burden was a result of your problems with
24 CERTAIN COMPANY and XXXXX Limited had
25 nothing to do with FINSAC?

receivable to

1
2 A: another?
3 No, I am not aware of it.
4 Which no doubt would inform why you
5
6 But did you not say that you were
7 experienced in banking affairs?
8 A: I didn't say that, I did not say I am
9 experienced in banking affairs. Okay.
10 Q: I am not a banker, I have no training in
11 banking.
12 Q: You are experienced in matters of
13 commerce?
14 A: I am experienced in the craft that I
15 practice, that is, construction.
16 Q: You are experienced in entrepreneurial
17 activity?
18 A: Construction and engineering.
19 Q: And in entrepreneurial activity?
20 A: Yes.
21 Q: And entrepreneurial activity is known to go
22 up and down, correct?
23 A: Sure.
24 Q: Were you aware - well, when you were
25 borrowing money at 85% interest per

1 annum, and your business was going well, did
2 it occur to you that if you suffered a
3 reversal of fortune it would be

5 A: Sure it did.

6 Q: And is that not what happened to you
7 DEBTOR?

8 A: Yes.

9 Q: And wasn't borrowing money at 85% a
10 matter of choice for you, a decision
11 that you made, you alone?

12 A: It wasn't a matter of choice, it was a
13 matter of the situation that existed at
14 the point in time.

15 Q: And were you aware that there were other
16 persons who borrowed money who did repay
17 their loans?

18 A: I am not aware of that because everybody
19 in the construction industry was having
20 the same set of problems.

21 Q: Not everybody, DEBTOR. Believe it or
22 not default debtors are a tiny minority
23 of the amount of loans that were entered
24 into by financial institutions and
25 banks.

1 Which brings me to another point. You are
2 not a party to the agreement for sale
3 between Refin Trust and Jamaican

5 Jamaican Redevelopment Foundation?

6 A: If I am not a party? What you mean by that
7 question?

8 Q: You are not a party to that agreement.
9 Don't you agree with me that that
10 agreement does not concern you in any
11 way?

12 A: It concerns me because my indebtedness
13 ended up in both of them hands or in
14 their portfolio.

15 Q: I am just trying to figure out why on
16 earth you feel if your debt is sold you
17 would be automatically relieved of the
18 interest payment?

19 A: Because I was given the understanding,
20 and I made that clear earlier on, that
21 when the debt that was held by FINSAC, was
22 sold to first of all Dennis Joslin, that
23 Jamaican Redevelopment came into the
24 picture after.

25 Q: No, Dennis Joslin is an agent of

1

Jamaican Redevelopment.

2

A:

As far as I am concerned I am getting

3

correspondence from Dennis Joslin on

5

understanding is that all these debts that

6

were sold by the Government to this entity was

7

sold at the principal debt. I wasn't aware

8

that the interest was sold to them too or the

9

interest continued on

10

in terms of what was taken over.

11

Q:

DEBTOR, the debt is sold, the debt is

12

sold.

13

Look with me, would you, at the letter

14

that you received because I am really

15

not understanding your confusion in this

16

regard. I thought the letter was quite

17

clear myself when I looked at it.

18

CHAIRMAN:

DEBTOR10(A)

19

MRS. PHILLIPS:

I am obliged, Commissioner.

20

Look at DEBTOR10(A) for me, DEBTOR.

21

A:

I don't have it numbered. What letter is

22

that?

23

Q:

The letter of March 27, 2002 on the

24

letterhead of Refin Trust Limited. "This
letter serves to give you notice

somewhere. That means you buy a debt at one price and

1 you try to collect it and hopefully you make
2 a profit. That's the business of debt
3 collection. Simple.

5 million principal and \$2 million on
6 account of interest arrears, or your
7 lawyer did on your behalf, right.

8 A: Yes.

9 Q: But you never paid it, did you
10 DEBTOR?

11 A: Agreed with who?

12 Q: The letter that I showed you that
13 Nicholson and Company wrote proposing to
14 the bank to pay 21 point something
15 million dollars, you never paid it, did
16 you?

17 A: At this point in time I am very hazy
18 about Nicholson and Company. Until I go
19 and check my files I cannot answer you.
20 I don't know.

21 Q: Okay. I was so impressed with how clearly you
22 were remembering things earlier. But let us
23 move from Nicholson and Company and come to
24 this Memorandum of Understanding. This
25 Memorandum of

1

Understanding which is a without

2

prejudice document that your lawyer has

3

exhibited and the various responses to

never en [REDACTED] p in an agreemen [REDACTED]

5

it, and so it remains without prejudice,

6

does it not? But it is here, so let's

7

deal with it.

8

When Jamaican Redevelopment Inc. in 2004

9

was offering to settle your debt for

10

twenty million Jamaica dollars, given

11

that you had proposed to pay twenty one

12

million dollars in 1998, was not this a

13

worthwhile offer?

14

A:

It was a worthwhile offer, yes, when the

15

agreement was being struck.

16

Q:

Which offer you never accepted, correct?

17

A:

Right, because of the accompanying...

18

Q:

So having not accepted it, what stands

19

is the debt that is owed without any

20

compromise, correct?

21

A:

Correct.

22

Q:

And the debt that is owed without

23

compromise, allows Jamaican

24

Redevelopment Foundation Inc, or whoever

25

is the holder of the debt to charge

1 interest at the rate set out in these
2 promissory notes because you agreed to
3 those, yes?

5 Q: Oh! You did not agree to those rates in the
6 promissory notes?

7 A: You are mixing two things. You are talking
8 about promissory notes that I signed at the
9 bank and you are also talking about a
10 Memorandum of Understanding with the
11 Jamaican Redevelopment. They are two
12 different

13 things. One was done in one form, the
14 next one was done as a different
15 institution who was proposing to
16 liquidate the debt and you have to speak
17 about them individually; you can't be
18 mixing the two of them together.

19 Q: I don't think I am mixing them but that
20 is for the Commission.

21 A: That's what you are doing.

22 Q: Okay. Thank you for that. We will trust
23 the Commission's assessment.

24 You signed three promissory notes which were
--

transferred from NCB to Jamaican

1

Redevelopment Foundation?

2

A:

Right.

3

Q:

Look at your DEBTOR13, your exhibit 13,

5

initialled at the bottom and the 15th June

6

2008. And the reason you were able to put it

7

in your evidences is because you received it

8

from JRF, isn't that correct?

9

10

A:

Which document you

are referring to?

11

Q:

MB13, this lovely document here,

12

Statement of account, full Statement of

13

Account showing the promissory notes and

14

the date of issue in 1997 and every

15

single solitary payment on account since

16

that day to the present.

17

A:

Sure.

18

Q:

Let us look at it. You have it?

19

A:

Yes, I have it.

20

Q:

Do you see in the fourth or fifth column

21

from right under the heading

22

'Principal Ja dollars', the three

23

promissory notes recorded one under the

24

other for the amount that you agreed to?

25

A:

Right.

1 Q: And do you see under the interest rate column
2 which is the fourth from the left the interest
3 rate that you agreed to?

5 4: And in every case those interest rates, 30%,
6 correct?

7 A: Yes.

8 Q: And you do recall the promissory notes
9 themselves allowing for the charging of
10 interest on interest, correct?

11 A: You have just brought it to my
12 attention.

13 Q: Oh! I thought you said you knew
14 everything that was there. Anyway you
15 agree that it is there?

16 A: Yes.

17 Q: But fortunately for you Jamaican
18 Redevelopment has not charged compound
19 interest, it has charged simple
20 interest.

21 But before we even reach to Jamaican
22 Redevelopment Foundation, let us look at the
23 payment column. Payment: Under the Payment
24 Column you see 'UDC, UDC,UDC'. You see those?

1 A: Yes, it is all here.

2 Q: Do you agree with me they represent the
3 payments that were coming in from the

5 to the bank for work DEBTORCOMPANY was doing
6 for UDC?

7 A: No, I don't agree with it because this is
8 not payment by UDC to the bank, the bank was
- receiving certificates from
10 projects and from the proceeds of the
11 certificates that the bank received they
12 were taking out this amount of funds
13 from those cheques to pay against the
14 loan that was there and the rest of it
15 was deposited to my account. It is not
16 UDC who was paying the debt, it was the
17 bank who was taking the money from my
18 account. UDC is only mentioned here
19 because I had to assign the income from
20 that project to the bank to be able to
21 continue in business because what the
22 bank...

23 Q: Hold on,
24 DEBTOR, let's take it one step at a time
-- please.

1997 DEBTORCOMPANY entered into a contract with

1 the UDC to undertake certain development
2 work?

3 A: Right.

DEBTORCOMPANY applied B
5 fund of \$XX million, to enable it to
6 meet the terms of the contract, correct?

7 A: Correct.

8 Q: NCB granted the facility on terms among
9 others, that the proceeds of said
10 contract would be assigned to the bank
11 in repayment of the demand loan,
12 correct?

13 A: Right.

14 Q: Okay. Let's go back to the document
15 now. They represent payment coming in
16 in relation to the UDC project, do you
17 agree?

18 A: Yes, but you are alluding to the fact
19 that the UDC paid the funds.

20 Q: DEBTOR, Mr. Wong Ken is going to
21 clarify anything that you find confusing
22 when I am finished. Just answer my
23 questions.

24 A: It's not confusing to me.

25 CHAIRMAN. Can we not have cross arguments, just

1
2 questions and answers. Can we deal with it
3 MRS. PHILLIPS: 4 on a question and answer basis? I am
5 Proceeds PROPERTY3'; do you agree that
6 was the proceeds of the sale of PROPERTY3,
7 net proceeds?
8 A: Yes.
9 Q: And then it is followed by two further
10 payments from the account of UDC?
11 A: Yes.
12 Q: Now, before you turn the page, would you
13 agree with me that there is not one
14 single, solitary payment on account
15 directly from DEBTORCOMPANY to the bank?
16 Would you agree with me that on this
17 page there is not one single payment on
18 account of the debt directly from DEBTOR-
19 COMPANY or you to the bank?
20 A: I don't agree with you.
21 Q: Okay. Let's look at the next page.
22 CHAIRMAN: Would you be saying therefore, Mrs. Phillips,
that there is no indication of payment on the account of DEBTORCOMPANY
from other sources apart from UDC?
23
24
25

1 MRS. PHILLIPS: No, no.

2 CHAIRMAN: UDC, the funds from UDC is a source from
3 DEBTORCOMPANY?

4 MRS. PHILLIPS: Yes, yes. I am not saying that, that is
5 why I said direct.
6 Would you agree with me that there is no
7 direct payment from DEBTORCOMPANY? I am not
8 saying these are not payments as a benefit
9 of DEBTORCOMPANY, I am not saying that.

10 CHAIRMAN: So it is really income that is DEBTORCOMPANY
11 that has been used by the bank to pay?

12 MRS. PHILLIPS: Yes, but I believe when you look at the
13 arrangement, you will see that there are
14 requirements for monthly payments and
15 the only payments that are going on this
16 account are payments that were being
17 made either from the sale of mortgaged
18 properties or through the assignment of
19 contract proceeds. That is the point I
20 am making; that separate and apart from
21 that, DEBTORCOMPANY itself is not making a
22 payment although the sale of mortgaged
23 properties and the proceeds of contracts are
24 to the benefit of DEBTORCOMPANY.

-- Page two. Would you agree with me that

1 the first payment on page 2 is a payment
2 made through the UDC for contractual
3 work performed by DEBTORCOMPANY?

4 A: That is so, as all the others.

5 Q: Now the second payment is one that was
6 realized from the sale of equipment?

7 Correct?

8 A: Yes.

9

10

11

Continued

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1

2 CHAIRMAN: Thank you very much.

3 Mr. Wong Ken -- DEBTOR, do you believe that the
4 documents that we have requested you would be
5 able to find them overnight?

6 7 DEBTOR: Some of what she

has shown me I will

8 have to go back to the attorney...

9 CHAIRMAN: No, I am not talking that, I think we
10 are talking about the other things that
11 we have asked you about. Those that she
12 has pointed out, she is going to provide
13 us with copies.

14 DEBTOR: Right.

15 CHAIRMAN: But would you be able to find the other
16 things that you have promised like the
17 request for statements and those
18 letters, do you think you would be able
19 to find them overnight? If you could,
20 then what we will do we would adjourn at
21 this time and come back tomorrow
22 morning, Mr. Wong Ken, and see if he can
23 find those and then we could continue.

24 MR. WONG KEN: That is fine by me Commissioner.

25 DEBTOR had indicated a difficulty for

1 tomorrow, but I would urge him to make
2 himself available. I don't anticipate that
3 the Commission would require him for much
4 more than the morning session.

5 CHAIRMAN: No, I doubt it.

6 MR. WONG KEN: Perhaps not even as much as the morning
7 session. So I would urge him to come
8 back and finish his evidence.

9 CHAIRMAN: And DEBTOR, if you could try to find
10 as many of those documents for us; you
11 made notes of most of them overnight.

12 DEBTOR: Yes.

13 CHAIRMAN: We would appreciate that and you come
14 back tomorrow morning at 9:30 and
15 Mr. Wong Ken will lead you through and
16 clarify certain points and we will be
17 able to, hopefully, close your evidence.

18 DEBTOR: Sure.

19 CHAIRMAN: Is that okay with Counsel?

20 MRS. PHILLIPS: I am just wondering, given the hour I
21 would not be able to get photocopies

22 done tonight. The office will be
23 closing now.

24 CHAIRMAN: You mean for those that you have
25 promised?

1 MRS. PHILLIPS: Yes. Do you actually need them first

2 thing in the morning tomorrow?

3 CHAIRMAN: I think for yours I do not think that we need
4 them definitely because at least we have
5 seen them.

6 MRS. PHILLIPS: Okay, sir.

7 CHAIRMAN: The other documents we have not seen. If

8 MRS. PHILLIPS: there is anything that you need urgently
9 perhaps the office could facilitate and
10 make photocopies of them for the
11 Commission between now and tomorrow
12 morning.

13 CHAIRMAN: What you can do is you can bring them back
14 tomorrow morning.

15 MRS. PHILLIPS: Yes, I will certainly bring them back
16 tomorrow morning.

17 CHAIRMAN: And then we will quickly have a copy of
18 them.

19 MRS. PHILLIPS: Okay, thank you.

20 CHAIRMAN: Is that okay by counsel?

21 MR. WONG KEN: Commissioner, would it be a 9:30 start?

22 CHAIRMAN: Well, we would prefer a 9:30 start. Would
23 that be okay for you, DEBTOR? That would
24 be okay for me.

25 DEBTOR: I am going to make myself available, but

1

I have

3

4

to make a call. You see, I just

5

2

started on a

6

new project and I had to

-

ask for the time to be here today and so I

wasn't expected to go beyond today. And of course, I don't want to

jeopardize my situation in terms of just starting a new project in terms of

8

moving ahead.

9 CHAIRMAN:

Hopefully we should be able to wrap up

10

the morning session tomorrow so you can

11

probably inform the persons on whose

12

project you are working and just explain

13

to them that the Commission requires you

14

for another day.

15 DEBTOR:

I will phone them right after and alert

16

them.

17 CHAIRMAN:

Right.

18 DEBTOR:

So I will be here.

19 CHAIRMAN:

Okay then.

20 MR. GARCIA:

Commissioners, I am going to have a

21

difficulty for the morning, but I don't

22

think that needs to affect the session.

23

With respect to the document that has

24

been requested of me, I have a soft copy

25

which I will email to the Secretary this

1 afternoon. It is in fact an Instrument
2 of Assignment, assigning the debts of
3 Mutual Security Bank to National
4 Commercial Bank Limited.

5 CHAIRMAN: Thank you very much. Okay, this enquiry
6 stands adjourned until 9:30 tomorrow
7 morning. Have a good evening.

8

9

ADJOURNMENT

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