

Court File No. 07-0141

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

NELSON BARBADOS GROUP LTD.

Plaintiff

- AND -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES, a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY, R. G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC LAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25.

Defendants

AFFIDAVIT OF GITTENS CLYDE TURNEY
(Sworn May 21st 2007)

I. GITTENS CLYDE TURNEY of 15 James Street, Bridgetown, Barbados, West Indies attorney-at-law **MAKE OATH AND SAY** as follows:

1. I am one of Her Majesty's Counsel for Barbados, a defendant in the above action and a resident of Barbados.

2. My knowledge and information as hereinafter set out comes as a result of:
 - (a) acting as counsel for Classic Investments Limited ("Classic"), another defendant herein, since 1997, beginning with its offer to acquire control of Kingsland Estates Limited ("Kingsland"), also a defendant herein;
 - (b) acting as counsel for Kingsland since December 2005; and
 - (c) conversations with parties to this action.

3. Further, I acted for Classic in the litigation in Barbados and before the Judicial Committee of the Privy Council in the United Kingdom referred to in paragraphs 42 to 44 of this affidavit. I have also acted for Kingsland (since its take over by Classic) in the other litigation mentioned in paragraphs 47 to 49 of this affidavit.

The Defendants

4. Classic is a Barbados incorporated and registered company which in December 2005 obtained control of Kingsland, another Barbados incorporated and registered company and the owner of certain lands in Barbados.

5. Kingsland was a family company whose only shareholders, up to the time of its takeover by Classic, were members of the Deane family. It was incorporated and registered in Barbados in 1958. Its business was the production of cane for sugar and molasses, and the cultivation of vegetables and other agricultural produce. It owned substantial lands in Barbados, but following the decline of the sugar industry in Barbados in the 1980's, it was forced to sell off some of its lands to developers. It was

taken over by Classic in December 2005. It still owns certain lands in Barbados. It has no property or assets in Canada nor any dealings of any kind in that jurisdiction.

6. Richard Ivan Cox, Gerard Cox and Alan Cox are directors of Classic and since December 2005 have also been directors of Kingsland. All of them reside in Barbados.

7. Phillip Vernon Nicholls is an attorney-at-law in Barbados, a partner of Cottle Cafford & Co., and was formerly a director of Kingsland. He is resident in Barbados.

8. Eric Ashby Bentham Deane was formerly a shareholder and chairman of Kingsland and is now its secretary. He is resident in Barbados.

9. Owen Basil Keith Deane was formerly a shareholder, director and secretary of Kingsland and is resident in Barbados.

10. Marjorie Ilma Knox ("Mrs Knox") is a shareholder and former director of Kingsland and is resident in Barbados.

11. S.B.G. Development Corporation ("SBG") is a Barbados incorporated and registered company. It is resident in Barbados.

12. David Simmons (correctly known as "The Honourable Sir David Simmons, KA") is the present Chief Justice of Barbados. When still in private practice in 1992, he acted on behalf of SBG. He is resident in Barbados.

13. Elneth Kentish (correctly known as "The Honourable Elneth Kentish") is a High Court Judge in Barbados, was formerly a partner of R.G. Mandeville & Company, a director of both Kingsland and Keble Worrell Limited, and is resident in Barbados.

14. Glyne Bannister was a director and officer of SBG and is resident in Barbados.
15. Phillip Greaves is an attorney-at-law in Barbados who also acted on behalf of SBG and is resident in Barbados. He is not known in Barbados as Philp Greaves.
16. R. G. Mandeville & Co. is a law firm in Barbados of which I am a partner. It is resident in Barbados.
17. Cottle Catford & Co. is law firm in Barbados which formerly acted for Kingsland and is resident in Barbados.
18. Keble Worrell Limited is a Barbados incorporated and registered company of which I am a director and the sole shareholder.
19. Eric Iain Stewart Deane is the executor of the estate of Colin Deane deceased (a former shareholder of Kingsland) and is resident in the United Kingdom.
20. Lee Deane (properly known as "Vivian Gordon Lee Deane") is now deceased and was formerly a shareholder and director of Kingsland.
21. Errie Deane is the same person as Eric Ashby Bentham Deane.
22. Keith Deane is the same person as Owen Basil Keith Deane.
23. Malcolm Deane is an attorney-at-law in Barbados, a partner of R.G. Mandeville & Co. and is resident in Barbados.
24. Lionel Nurse is a permanent secretary in the civil service of Barbados and is resident in Barbados.

25. Leonard Nurse was formerly attached to the National Conservation Commission of Barbados and is resident in Barbados.
26. I have no knowledge of the Edward Bayley referred to in these proceedings.
27. Francis Deher is a retired businessman residing in Barbados.
28. David Shorey is an accountant practicing and residing in Barbados.
29. Owen Seymour Arthur (correctly known as "The Right Honourable Owen Seymour Arthur M.P.") is the Prime Minister of Barbados and is resident in Barbados.
30. Mark Cummins is presently the *Chief Town Planner of Barbados and resides in Barbados.*
31. I have no direct knowledge of Graham Brown, Brian Edward Turner, G.S. Brown Associates Limited, Golf Barbados Inc., Thornbrook International Consultants Inc., Thornbrook International Inc. or Phoenix Artist Management Limited. However, I understand that these persons and companies were professionals who were involved with SBG during its attempted takeover of Kingsland hereinafter more particularly described.
32. I presume that the reference to The Barbados Agricultural Credit Trust is a reference to the Barbados Agricultural Credit Trust Limited, a Barbados incorporated and registered company, which is wholly-owned by the Government of Barbados and is involved in the sugar industry of Barbados.

33. David C. Shorey and Company and C. Shorey and Company Ltd. have some connection, I presume, to the above-named David Shorey.

34. FirstCaribbean International Bank Limited is a Barbados incorporated and registered company carrying on a banking business in Barbados and elsewhere in the Caribbean and the Americas and is now the banker of Kingsland.

35. PricewaterhouseCoopers (Barbados) is a firm of chartered accountants carrying on business as such in Barbados.

36. The Attorney General of Barbados is the holder of a constitutional office under the Constitution of Barbados.

37. The Country of Barbados is an independent state within the Commonwealth.

38. To the best of my knowledge, information and belief, save and except for FirstCaribbean International Bank (Barbados) Limited, none of the companies mentioned herein which are incorporated and registered in Barbados have any connection to Canada or have any dealings, association or trade with that country.

The Background Facts and Prior Proceedings in Barbados

39. In 1992, SBG entered into a written agreement with Kingsland and all of its then shareholders, including Mrs. Knox, for the purchase of the entire issued share capital of Kingsland. This agreement was never completed.

40. Following the failure of the transaction with SBG, because of the age of Kingsland's shareholders and directors and the downturn in the sugar industry in

Barbados, the majority of the shareholders of Kingsland (with the approval of its then directors) sought to sell their shares in that company as it had become moribund and was substantially indebted to the Barbados Agricultural Credit Trust Limited and the Government of Barbados for land taxes.

41. In 1997, in accordance with its corporate documents, the then directors of Kingsland approved Classic "as one whom it is desirable in the interests of the company to be a shareholder". Consequently, in December 1997, all of the then shareholders of Kingsland (with the exception of Mrs. Knox and Eric Iain Stewart Deane, the executor and beneficiary of the estate of Colin Deane deceased), contracted to sell their shares in Kingsland to Classic. Subsequently, the said Eric Iain Stewart Deane, executor and beneficiary as aforesaid, also agreed to sell his shares to Classic.

42. In October 1998, Mrs Knox brought action in the High Court of Justice of Barbados (Suit No. 1805 of 1998) against the then shareholders of Kingsland, Classic and the then directors of Kingsland for a declaration that she was entitled to certain pre-emptive rights to purchase the shares of Kingsland in priority to Classic, for an oppression remedy and for other relief. This action was brought notwithstanding the determination by Kingsland and its directors that Classic was someone whom it was desirable to be a shareholder of Kingsland. This action was dismissed by Greenidge J. on June 14, 2001. Attached and marked as Exhibit "A" to this affidavit is a copy of the reasons of Greenidge J.

43. Mrs. Knox appealed to the Barbados Court of Appeal against the decision of Greenidge J. and her appeal was dismissed by that Court on April 16, 2003. Attached

and marked as Exhibit "B" to this affidavit is a copy of the reasons of the Court of Appeal.

44. Mrs. Knox appealed that decision to Her Majesty in Council (the Judicial Committee of the Privy Council) which dismissed her appeal on June 28, 2005. Attached and marked as Exhibit "C" to this affidavit is a copy of the reasons of the Privy Council.

45. Following the dismissal of Mrs. Knox's appeal to the Judicial Committee of the Privy Council, Classic proceeded with the acquisition of 86.042% of the shares of Kingsland which acquisition was completed in December 2005.

46. In January, 2006, in the course of reviving a moribund Kingsland, its new directors contracted to sell a beach-front property on the south coast of Barbados at a place called Maxwell Coast Road in the parish of Christ Church. This property was subject to a charge in favour of the former shareholders of Kingsland, including Mrs. Knox, who refused to sign a release of her share of the charge despite the offer of payment in full of all monies due to her by Kingsland.

47. Originally the owner of the charge, *Andefan Holding Limited* ("Andefan"), had obtained judgment against Kingsland under its securities in Suit No. 1683 of 1993 in the High Court of Justice of Barbados. That judgment was paid by the shareholders of Kingsland to whom the securities held by Andefan (the "Andefan securities") were assigned. Kingsland then made a successful application to redeem Mrs. Knox's share of the Andefan securities on payment of the debt owed to her. Attached and marked as Exhibit "D" is a copy of the reasons of Goodridge J., dated July 24, 2006, granting

Kingsland an order requiring Mrs. Knox to release her share and interest in the Andefan securities upon payment of the sum of BDS\$62,615.92.

48. Mrs. Knox refused to sign the release of her share of the Andefan securities and the Court therefore directed the Registrar of the Supreme Court of Barbados to execute such release for and on behalf of Mrs. Knox following the payment of the monies due to Mrs. Knox into Court by Kingsland. Such release was signed by the Registrar, stamped and registered in the Land Registry of Barbados.

49. Mrs. Knox subsequently appealed the Order of Goodridge J. and such appeal is presently pending, although currently stayed pending the provision of security for costs by Mrs. Knox.

50. In the course of these redemption proceedings, Mrs. Knox swore and filed an affidavit dated May 3, 2006 in which she stated that Nelson Barbados Investments Inc. had been appointed a receiver of Kingsland. According to the records in the Corporate Registry of Barbados, no such company had ever been incorporated in Barbados or registered as an external company in Barbados, nor was such company ever appointed receiver of Kingsland.

51. A plaintiff by the name of Nelson Barbados Investments Inc. did commence proceedings in 2007 against the defendants herein in the Ontario Superior Court of Justice under Action No. 07-0110, which proceedings were subsequently abandoned. The Statement of Claim in that action is exactly the same as that in the within action save for the name of the plaintiff. Attached and marked as Exhibit "E" to this affidavit is a copy of the said Statement of Claim. Attached and marked as Exhibit "F" to this

affidavit is a copy of the Notice of Discontinuance of Action No. 07-0110, filed March 26, 2007.

52. On July 21, 2006, Mrs. Knox, without any authority whatsoever, procured the appointment of joint receivers of all the undertaking and assets of Kingsland under and by virtue of her share of the Andefan securities. In the circumstances, Mrs. Knox was only entitled to appoint a receiver (to the extent of her share in the Andefan securities) against the plantation called Bannatyne situate in the parish of Christ Church in Barbados, which property was owned by Kingsland and was the principal collateral under the Andefan securities.

53. Kingsland commenced proceedings in the High Court of Justice in suit No. 1332 of 2006 and obtained an injunction to restrain the receivers from acting. Subsequently, the High Court of Justice held that the appointment of the receivers was improper. Kingsland's claim against Mrs. Knox and the receiver for damages, interest, costs and other relief is still pending in the Courts of Barbados. Attached and marked as Exhibits "G" and "H" to this affidavit are copies of the Orders of Cornelius J. and Blackman J. made July 22, 2006 and September 28, 2006, respectively.

54. Mrs. Knox has brought other proceedings against Kingsland and other of the named defendants in the High Court of Justice in Barbados:

- (a) Suit No. 993 of 2003 against Eric Ashby Bentham Deane, Owen Basil Keith Deane, Phillip Vernon Nicholls and Kingsland alleging oppression and seeking disclosure of various documents, statements and records of

Kingsland. Attached and marked as Exhibit "I" to this affidavit is a copy of the Originating Summons in Suit No. 993 of 2003.

- (b) Suit No. 1379 of 2006 against Eric Ashby Bentham Deane, Richard Ivan Cox, Gerard Cox, Allan Cox and Kingsland for oppression, an injunction to restrain the sale of the lands at Maxwell Coast Road, Christ Church, the appointment of a receiver/investigator of Kingsland and for other relief. This action was consolidated with Action No. 993 of 2003. Attached and marked as Exhibit "J" to this affidavit is a copy of the Originating Summons in Suit No. 1379 of 2006.

- (c) In Suit No. 1379 of 2006, Mrs. Knox sought the appointment of a receiver/investigator and an order restraining the sale of the land at Maxwell Coast Road, Christ Church in Barbados. The Court refused to make such an Order and the Court of Appeal refused leave to appeal from the said decision. The substantive case is still pending before the Courts of Barbados. Attached and marked as Exhibits "K" and "L" are the judgment of Blackman J. dismissing the summons seeking an appointment of a receiver/investigator and the judgment of the Barbados Court of Appeal dismissing the application for leave to appeal from the decision of Blackman J. respectively.

- (d) Suit No. 2141 of 2006 against Eric Ashby Bentham Deane, Richard Ivan Cox, Gerard Cox, Allan Cox, Kingsland, the Attorney General of Barbados and PricewaterhouseCoopers for leave to bring a derivative action in the

name of Kingsland against the Attorney General for compensation for the compulsory acquisition of certain lands of Kingsland in Barbados under the *Land Acquisition Act* CAP 228 of the Laws of Barbados. This case is still pending in the Courts of Barbados. Attached and marked as Exhibit "M" to this affidavit is a copy of the Originating Summons in Suit No. 2141 of 2006.

The Within Action

54. According to the Statement of Claim filed in these proceedings, the complaint of the plaintiff clearly focuses on Kingsland and its assets, both of which the plaintiff admits are situate in Barbados and neither of which is within the jurisdiction of the Canadian Courts. Further, to the extent the causes of action are discernable, they appear to be substantially similar and arise out of the same facts and circumstances as the claims *and issues that have already been dealt with by, or are pending before, the Courts of Barbados.*

55. Further, Nelson Barbados Group Limited is a Canadian corporation which is not registered in Barbados as an external company under the provisions of the *Companies Act* CAP 308 of the Laws of Barbados, nor is there any record of it having obtained any leave of the Central Bank of Barbados under the *Exchange Control Act* CAP 71 of the Laws of Barbados to hold any asset in Barbados and in particular any interest in Kingsland.

56. I am informed by the directors and secretaries of Classic and Kingsland that the records of those two companies clearly establish that the plaintiff is unknown to them.

Further, the plaintiff is neither a shareholder nor a creditor, nor does it have any relationship or dealings of any kind with either of these companies or its present directors or officers.

57. Most of the defendants in these proceedings are residents of Barbados and the subject matter of the allegations of the plaintiff concerns the assets of Kingsland, all of which are situated in Barbados and have no connection with Canada. As previously stated, I have no knowledge of the defendants Brian Edward Turner, Thornbrook International Consultants Inc., Thornbrook International Inc. and Phoenix Artist Management Inc. who, apart from the plaintiff, are the only parties who appear to reside *in Ontario*. *No specific allegations are made against these defendants, and their involvement in the subject matter of the action would therefore appear to be, at best, peripheral.*

58. *This action should therefore be tried, if at all, in Barbados. Most, if not all, of the key witnesses and documents are located in Barbados. And it is laws of Barbados which are relevant to the alleged complaints. If tried in Canada, the laws of Barbados would be a matter for proof as foreign law in accordance with conflict of laws principles, rather than being adjudicated by a Court in the country where the dispute arose.*

59. Further, the concerns raised in paragraph 63 of the Statement of Claim are *misguided*. The constitution of Barbados guarantees a fair trial of any proceedings in its courts, whether the parties are resident or non-resident, nationals or non-nationals. And the suggestion that the plaintiff could not get a fair trial in Barbados because some of

the named defendants are politicians or members of the judiciary is ridiculous and insulting.

60. It is in the interest of fairness and justice to all the parties that this action should be tried, if at all, by the Courts of Barbados because of its connection with that country. Simply put, there is no connection between the plaintiff and the events alleged in the Statement of Claim that involve or concern Canada, save and except that the plaintiff is incorporated in Ontario.

SWORN TO by the deponent the said
GITTENS CLYDE TURNEY
at the Law Courts, Coleridge Street,
Bridgetown, Barbados this 21st day of
May 2007 before me:



~~Deputy~~ Registrar of the Supreme Court
of Barbados and as such a Notary
Public in and for Barbados
**ASSISTANT REGISTRAR & AS
SUCH A NOTARY PUBLIC IN
AND FOR BARBADOS.**


GITTENS CLYDE TURNEY