

SUPERIOR COURT OF JUSTICE

B E T W E E N

NELSON BARBADOS GROUP LTD

Plaintiffs

- and -

RICHARD COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS,  
ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, DAVID  
SIMMONS, PETER SIMMONS, ELNETH KENTISH, GLYNE BANNISTER,  
PHILIP GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE & CO.,  
COTTLE CATFORD & CO., KEBLE WORRELL LTD., ERICK IAIN STEWART  
DEANE, The estate of COLIN DEANE c/o Eric Iain Stewart Deane,  
LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL  
NURSE, LEONARD NURSE, EDWARD BAYLEY, MARK CUMMINS, FRANCIS  
DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, 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 LTD., PHOENIX ARTISTS  
MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, PRICE  
WATERHOUSE COOPERS (BARBADOS), MARJORIE ILMA KNOX, FIRST  
CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., ATTORNEY  
GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS, JOHN DOES 1-25,  
ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND  
BAYLEY, LIFE OF BARBADOS LIMITED, DAVID CARMICHAEL SHOREY,  
VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD AND  
COMMONWEALTH CONSTRUCTION INC.

Defendants

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R U L I N G

BEFORE THE HONOURABLE MR. JUSTICE SHAUGHNESSY  
on December 8, 2008, at WHITBY, Ontario

1  
Nelson v. Cox  
Ruling

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APPEARANCES

**Mr. McKenzie** Counsel for the Plaintiff

**Mr. G. Ranking** Counsel for PriceWaterhouseCoppers  
Caribbean Firm.

**Paul Schabas** Counsel for David Simmons, Peter  
Simmons, S.B.G. Corporation, David  
Shorey and David C. Shorey and Company,  
Peter Greaves.

**Lorne S. Silver** Counsel for Richard Ivan Cox, Gerard  
Cox, Alan Cox, Gittens Clyde Turney,  
R.G. Mandeville & Co., Keble Worrell  
Ltd., Lionel Nurse, the Right Honourable  
Owen Seymour Arthur M.P., Mark Cummins,  
Kingsland Estates Limited, Classic  
Investments Limited, the Barbados  
Agricultural Credit Trust (more  
properly, Barbados Agricultural Credit  
Trust Limited), the Attorney General of  
Barbados, the Country of Barbados, the  
Honourable Elneth Kentish, Malcolm  
Deane, Eric Ashby Bentham Deane (also  
named as "Eric Deane"), Owen Basil Keith  
Deane (also known as "Keith Deane"),  
Estate of Vivian Gordon Lee Deane, David  
Thompson, Owen Gordon Finlay Deane, Life  
of Barbados Holdings, Life of Barbados  
Limited and Leonard Nurse.

**Maanit Zemel** Counsel for Erick Iain Steward Deane and  
the Estate of Colin Ian Estwick Deane

**Lawrence Hansen** Counsel for Glynne Bannister.

**David Bristow** Counsel for Philip Vernon Nicholls and  
Cottle, Catford & Co.,

Nelson v. Cox  
Ruling

**Adrian Lang**

Counsel for First Caribbean  
International Bank (Barbados) Ltd.

**Paul Ivenoff**

Counsel for Veco Corporation

**David Conklin**

Counsel for Commonwealth Construction  
Canada Ltd and Commonwealth Construction  
Inc.

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3  
Nelson v. Cox  
Ruling

R U L I N G

Shaughnessy, Click on lock symbol to unlock the template and then hit the delete key to erase this message.J., Orally

Approximately six months ago this week of December 8<sup>th</sup> was scheduled to hear the jurisdiction motion which was originally brought by the defendants approximately twenty months ago.

Mr. McKenzie, representing the plaintiffs, seeks an adjournment of the jurisdiction hearing on a number of grounds.

1. That he seeks leave to appeal my procedural order of December 2<sup>nd</sup>, 2008 for which reasons were delivered on December 3<sup>rd</sup>, 2008.
2. That an affidavit which was delivered today by Mr. Ranking's assistant requires an adjournment to respond. Mr. Ranking then withdrew the affidavit to which Mr. McKenzie states that he must make a motion to withdraw and, further, Mr. McKenzie states he wishes to argue that a party cannot withdraw an affidavit once served and filed. The affidavit in question references statements of claims issued by Mr. McKenzie's office and a corporate search of the plaintiff, correspondence

Nelson v. Cox  
Ruling

to Mr. Silver relating to service of the statement of claim, as well a note passed by Mr. McKenzie at the cross-examinations to Mr. Ranking relating to production of documents.

With the withdrawal of the affidavit I see no merit in adjourning this motion for jurisdiction and I do not accept Mr. McKenzie's position.

3. Mr. McKenzie suggests an adjournment on the basis that the audio video of the cross-examinations he wishes to have, to use his words, "cloned and preserved".

I find no merit to this request. The tapes are filed with the court. My order of December 2<sup>nd</sup> at paragraph 6 deals with one occurrence relating to the audio video that was remedied by a backup system. The tapes are filed with the court as detailed in the previous order. Therefore, the request for an adjournment on this ground is refused.

4. Mr. McKenzie then states that he wishes an adjournment to get evidence to show who was exploiting the court process. He further wants to delay the proceeding in order for the court in Barbados to rule on an issue relating to Marjorie Knox. These matters, in my opinion, are not reasons to delay a jurisdictional motion.

5  
Nelson v. Cox  
Ruling

Further, Mr. McKenzie's submission on this and, indeed, other grounds for an adjournment are based on innuendo and speculation and totally unsupported by any material.

5. Mr. McKenzie suggests he has potential experts that he wants to review the video/audio tapes. He does not identify the experts or their expertise. He also suggests he "may" have a former Chief Justice review the tapes and comment.

Once again, I dismiss this as grounds for an adjournment. I am dealing with a jurisdiction motion which Mr. McKenzie has had a right to cross-examine the defendants. These cross-examinations were completed November 3<sup>rd</sup>. We have transcripts of the cross-examinations completed by a service, which Mr. McKenzie describes as professional and reliable.

6. Mr. McKenzie states that he needs an adjournment to prove that it is not fair to try this case in Barbados based on how the legal system is run in that country.

This has been Mr. McKenzie's position for well over a year and yet he has not produced any credible evidence in support of his contention. Indeed, these allegations relate and reflect on the issue of prejudice which I will comment on in due course.

Nelson v. Cox  
Ruling

Therefore, I reject that this is a ground for an adjournment.

7. Mr. McKenzie says he is unable to get copies of court files in the Barbados court referred to in the cross-examinations. Mr. McKenzie did not even make a request for the information until December 3<sup>rd</sup>. However, I believe that his request will be answered if diligently pursued. Therefore, an adjournment on that ground is not granted.

8. In this proceeding Marjorie Knox is represented by Mr. Sheppard in the Barbados. For reasons which I cannot discern, Mr. McKenzie believes that he should take up the issue of threats to Mrs. Knox, which issue is being pursued by her counsel in the courts in Barbados. While Justice Chandler in Barbados may be hearing some issue relating to Mrs. Knox that should not, in my opinion, suspend the hearing of the jurisdiction motion.

I might add that issues relating to threats against Marjorie Knox, the defendant in this proceeding are not, in my opinion, particularly germane to the jurisdictional issue. This issue also resembles the whole issue of threats on the Internet which I dealt with at length in prior written reasons.

Mr. McKenzie stated there is no urgency to this jurisdiction motion and no prejudice to the

Nelson v. Cox  
Ruling

defendants if an adjournment was granted. I disagree wholeheartedly with Mr. McKenzie. This is a widely circulated proceeding in the press and among the citizens of Barbados that has cast aspersions on the defendants which requires redress.

This proceeding has had a number of adjournments of hearing and it is time for the jurisdiction motion to be decided. I find it is prejudicial to the defendants to delay proceedings.

The only matter, however, that gives me difficulty in this application is the leave to appeal my order of December 2<sup>nd</sup>, 2008. I cannot be asked to determine the correctness of my own order.

However, I have a solution. The motion for an application for a leave to appeal will be heard by Justice Jayne Ferguson this Thursday on December the 11<sup>th</sup>, 2008. The plaintiff will deliver his materials in support of that motion by Tuesday, December 9<sup>th</sup>, that's tomorrow, at 3:00 p.m. The defendants will respond with reply material by December 10<sup>th</sup> at 3:00 p.m. I am bridging all the time for services and the time for hearing of motions under the rules.

The motion will be heard, again I repeat, Thursday, December 11th at 9:30 a.m.

8  
Nelson v. Cox  
Ruling

The application for leave to appeal the order of December 2<sup>nd</sup>, 2008 or, and I add, any application to appeal this order today of December 8<sup>th</sup>, are to be heard on December 11th, 2008. There will be a conference call with me which will be arranged by counsel on January the 5<sup>th</sup>, 2009. And I'm telling counsel now to leave open the weeks of either February 23<sup>rd</sup>, 2009 or the week of April 6<sup>th</sup>, 2009, that's a four-day week in which I intend on one of those two weeks to hear this jurisdiction motion.

Costs of today's hearing will be reserved to a future cost motion and any other motion or motions to be brought in this proceeding are to be brought no later than January 31<sup>st</sup>, 2009, before me.

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Nelson v. Cox  
Certification

FORM 2  
Certificate of Transcript  
Evidence Act, subsection 5 (2)

I, Suzanne Lafontaine, certify that this document is a true and accurate transcript of the recording of Nelson v. Cox in the Superior Court of Justice held at Whitby taken from Recording No. 191, 192 Certified on Form One

December 9, 2008

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Suzanne Lafontaine  
Certified Court Reporter

Transcript ordered.....December 9, 2008  
Transcript completed.....December 9, 2008  
Transcript approved for release.....December 10, 2008

**THIS IS NOT A CERTIFIED COPY UNLESS ORIGINALLY SIGNED**