



Drawn and Prepared By:

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BRIDGETOWN

IN THE HIGH COURT OF JUSTICE

2008 No: 170

CIVIL DIVISION

IN THE MATTER OF:

The Companies Act, Cap 308 of the Laws of Barbados, sections 228, 66, 169, 175 & 231

AND IN THE MATTER OF:

The Breakers Investment Inc., the company in question

IN THE MATTER OF:

The application of Everton Leo Cumberbatch for relief under section 228 of the *Companies Act, Cap 308*

AND IN THE MATTER OF:

The Rules of the Supreme Court, Cap 117 of the Laws of Barbados, Order 90, Rules 2 & 6

BETWEEN:

EVERTON LEO CUMBERBATCH

Plaintiff

AND:

LARRY LESLIE TATEM

Defendant No. 1

LEROY C. PARRIS

Defendant No. 2

THE BREAKERS INVESTMENT INC.

Defendant No. 3

AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS

(Sworn by Everton Leo Cumberbatch and filed on his behalf)

I, **EVERTON LEO CUMBERBATCH** of Lot 3 Hillcrest Avenue, Fort George Heights in the parish of Christ Church and island of Barbados hereby make oath and say as follows: -

1. I am the applicant in this matter and I am duly authorised to swear this Affidavit.

2. I am a business executive by profession and have engaged in a number of business projects over the years.
3. At present I manage E-communications Inc., a limited liability company which engages in large scale publications and advertising, web development, amongst other things.
4. Also since 2007, I have been operating a tour business called Sunstation Tours – a tour business which caters principally to upper middle class persons.
5. I manage a construction company, EC Trucking & Construction, a sole proprietorship which provides housing solutions to low income individuals within the island.
6. In 2005 I started to make considerable headway in the information technology and communications sphere, most notably in the area of call centre operations and medical transcription.
7. The businesses which I operate are substantially facilitated by the Barbados Investment Development Corporation (BIDC) and The Credit Guarantees Scheme of The Central Bank of Barbados.
8. I also have an equity relationship with the government-funded entity known as Barbados Small Business Venture Capital Inc.
9. In a word, I am deeply and passionately involved in business-Barbados and I am well aware of the many instruments available for financing in the island.
10. Both my exposure and experience in the business community has helped me to understand that as a businessman I need not have my own cash in order to mobilise a project.
11. Over the years I have seen a number of projects develop by persons like myself who either did not have sufficient cash of their own to organise a particular project or simply did not wish to strain their existing financial resources to conclude it.
12. In 2004, I started to explore the possibility of engaging in the more lucrative tourism development projects within the island.
13. It is no secret that I did not have the cash in any bank account of my own in order to conclude this type of project which I was considering.

14. However I had conducted extensive research in the area. I observed the birth and growth of several resort development projects within the island, most notably, Royal Westmoreland, The Crane and BaCassa Development.
15. My research showed that BaCassa, a development led and pioneered by two young expatriates from the United Kingdom achieved resounding success because these two individuals came to Barbados and sold an idea of sorts to the owners of Black Bess Plantation which involved converting Black Bess from an agricultural enterprise to a resort community.
16. Their strategy was similar in principle to the one I had chosen, that is, to develop the owner's land, obtain the necessary town planning permission, acquire the capital out of the United Kingdom market and pre-sell the proposed development.
17. Out of the 350 acres of land available at Black Bess they had already determined how many villas would be constructed and how much profit would be generated from those sales.
18. The net effect of all of this was that the villa purchasers obtained a more advantageous price and the developer, an 'accelerated' profit.
19. My objective in 2004 therefore was to identify a suitable parcel of land, finalise an agreement with the vendor, prepare a business development plan and make the necessary representations to the relevant financial institutions for an offer of equity and loan with a moratorium on interest for a specified period of time.
20. My initial research for a site with development potential led me to Long Beach Hotel one of whose two principal shareholders/owners had recently died and whose surviving principal shareholder/owner, one Cora Dell, was considering retirement and wished to divest herself of her interest in the hotel.
21. Unfortunately my discussions with her and her associate suggested that they were not in a state of readiness and I therefore abandoned the idea.
22. On one of my visits to the Long Beach Hotel I recognised that a few small properties away from the hotel lay a mass of undeveloped land.
23. I made a visit to the Land Registry to investigate ownership. Seawell Resorts Limited was the owner on record.

24. I thereafter conducted searches at the Office of Corporate Affairs & Intellectual Property which led me to Sir Fred & Lady Philips, who both held directorships in that company.
25. Sir Fred referred me to Attorney-at-law Alfred Clarke who is now deceased.
26. I contacted Clarke the following Monday morning.
27. Clarke immediately informed me that Attorney-at-law Elliott Mottley had been acting as legal counsel for Seawell Resorts Limited in certain matters and that I should probably speak with him.
28. I contacted Mottley.
29. Mottley suggested that I communicate my interest in writing.
30. He also provided me with the contact information for his clients who, at the time, resided in Italy.
31. All my communications with them was therefore by telephone and email.
32. In June 2004, after some prolonged discussion and break in negotiations, Mottley contacted me with a proposal to meet with his clients during their visit to the island around that time.
33. I met with Marco Marianni and a few of Seawell's directors at the Accra Beach Hotel and conversed with them relative to their company's interest in disposing of the land.
34. During our discussion, they informed me that the Barbados Government had compulsorily acquired 10 acres of the land for its own purpose. The land, once 42 acres, was now 32 acres.
35. As a result of our discussions a draft Agreement for Sale was prepared and submitted to me through my attorney-at-law Freundel Stuart for my consideration. This was in 2005.
36. Once I had sight of the agreement I renewed my due diligence searches.
37. It was at this stage that I discovered that the Chief Town Planner had refused development of the land in an application submitted to him bearing reference number 3016/12/01D.

I attach and mark as Exhibit "**ELC1**" for identification purposes copies of the said Refusal from the Chief Town Planner.

38. This information threw the proverbial spanner in the works and we, i.e., Seawell's directors and I, could not thereafter agree on price.
39. After some lapse of time, I assumed that the company had found a new buyer until November 2006 when one Francesco Lauri contacted me introducing himself as the attorney-at-law for Consorzio Construction Corporation, the parent company of Seawell Resorts Limited. Lauri explained to me that the Board of Directors of Consorzio had instructed him to dispose of the parcel of land in Barbados.
40. The reason for contacting me, he explained, was to confirm my interest in purchasing the land.
41. Once I realised that the parcel of land was still very much on the market, I affirmed my interest on condition that the sale price be re-negotiated on the basis of my research findings.
42. Francesco Lauri visited Barbados the following week and we had our first meeting at The Royal Pavilion Hotel where he stayed.
43. We discussed the terms of the sale and agreed on the revised price of US\$2,000,000.00 contingent on my undertaking to him, that I would pay to a firm called Grinsham Industries in the Bahamas the sum of US\$1,000,000.00.
44. On his return to Italy, Lauri sent to me by fax, copies of the documents relating to the land, namely the Deed of Conveyance and Surveyor's plans.

I attach and mark as Exhibits **"ELC2"** **"ELC3"** **"ELC4"** and **"ELC5"** respectively for identification purposes copies of the fax cover page, the Deed of Conveyance dated 20 March 1981, the panoramic photo taken by Richard Gill Associates Ltd. and the description of the site received from Lauri.

45. I tendered a formal offer to Francesco Lauri for the purchase of the land together with a Letter of Undertaking.

I attach and mark as Exhibit **"ELC6"** for identification purposes copies of the offer to purchase dated 08 December 2006.

46. At this stage Lauri queried whether I was proceeding with the transaction in my personal name or through a company.

47. I told him I would proceed with a registered corporate entity.

48. He asked to be introduced to a reputable person within the island who could vouch for my seriousness to such a purchase.
49. As Defendant No. 1, Larry Leslie Tatem had been an elder and a mentor of sorts, I asked him to accompany me to the next meeting with Lauri in order to address any concerns Lauri might have.
50. It was at this stage that Defendant No. 1 became involved.
51. Lauri was impressed by him.
52. After Defendant No. 1 left the hotel where Lauri stayed on his return to the island, Defendant No. 1 contacted me via my cell and informed me that if I was interested he could find the financing locally on my behalf.
53. He advised me to deal with Sir Richard Cheltenham as my attorney-at-law in the purchase, emphasizing that he was a lawyer of many years' call who had tremendous contacts and business 'know-how.'
54. He also emphasised that Sir Richard by virtue of his Chairmanship of The National Insurance Board and his relationship with the leaders of financial institutions was in the best position to source the monies for me.
55. I agreed and he introduced me to Sir Richard.
56. Shortly afterwards the three of us visited the site.
57. One morning Defendant No. 1 contacted me with a request to pass all the documentation relating to the project to Sir Richard and I did so.
58. The following morning he contacted me again and asked me if the documents were originals or photocopies.
59. I told him they were copies.
60. On Lauri's return to Barbados I, together with Defendant No. 1 and the said Sir Richard Cheltenham, met with Lauri to review the legal documentation which Sir Richard had requested from him.
61. We decided to proceed with the incorporation of the company naming the Defendant No. 1, his son - Larry Pierre Tatem and I as the three directors.
62. The Breakers Investment Inc., the company in question, came into existence by registration on 01 February 2007.

I attach and mark Exhibit "ELC7" copies of the Certificate of Incorporation and accompanying documents for identification purposes.

63. One Sunday afternoon Defendant No. 1 telephoned me saying that he and Sir Richard had found the funds to consummate the purchase; that he couldn't say much yet and that a further meeting between him, Sir Richard and the financier would occur shortly.
64. Naturally I wanted to be present and told him so.
65. His reply was that I could not attend; that he and Sir Richard were dealing with 'high-powered people' and that it was better for the two of them to secure the funds without much delay.
66. I also suggested to him that we sit down and determine the profit sharing ratio between him, Sir Richard, his son and I.
67. His reply then was that he was proposing an equal division of profit between the four of us so that none of us would get any greater benefit than the other. He also said that as he is older than we are, he would assume Chairmanship and I would be company secretary.
68. This designation of officers which he proposed did not matter much to me because he was a man I respected and a man whose leadership I had hitherto been comfortable with.
69. Later during that same week he confirmed that the meeting with the mysterious financier was successful and that the financing came through Leroy Parris, Defendant No. 2.
70. Neither he nor Sir Richard had, at this stage, informed me that the Defendant No. 2 was personally involved as opposed to the institution known as Clico which he chaired.
71. At this stage, I was labouring under the impression that the company had secured a 100% loan from Clico and that 10% of the purchase price of the land had been advanced Sir Richard to cover the 10% deposit to Mottley on Seawell's behalf.
72. I was then made to understand that in addition to securing the financing from Clico and the US\$1,000,000.00 which was originally to be paid into the overseas account to the credit of Grinsham Industries by Dr. Patrick Antoine, would now be partially paid the said Antoine in the amount of US\$500,000.00 and the other half by Defendant No. 2.

73. I was further made to understand that contrary to all that we had previously discussed, a different set of arrangements had been entered into between Defendant No. 1, Sir Richard and Defendant No. 2, the net effect of which was that this US\$1,000,000.00 paid by Antoine and Defendant No. 2, was not to be refunded as I was told originally when mention was made of Antoine but were in fact investments by Antoine and Defendant No. 2 in the company.
74. I was also made to understand that Defendant No. 1 and Sir Richard had entered into a profit sharing agreement with Defendant No. 2 and that in exchange for the latter's assistance, capital injection and facilitating the loan to Clico, the net profits of Defendant No. 3 would when made, be distributed in accordance with the following ratio:-
- 20% to the Defendant No. 2;
 - 25% to Sir Richard Cheltenham;
 - 25% to Defendant No. 1;
 - 15% to Patrick Antoine and
 - 10% to me,
- and that the remaining 5% would go to Defendant No. 2 as additional incentive for facilitating the loan.
75. I contacted Defendant No. 1 the evening of receipt of the above information. I informed him of the said information I had received from Sir Richard earlier in the day and expressed my surprise that he had never mentioned any of it to me though he and I were conversing on a daily basis.
76. In reply, the First Defendant stated that nobody (including Leroy Parris) would put up money in a project of that nature without getting something from it.
77. I explained to him that there was no way that the said Parris would have put that amount of money into the company except on the understanding that he, with them, would and had devised a way of working me out of it.
78. His simple reply was that maybe Parris did not know who it was at the time and that even if I tried to exclude Parris by repaying him I would never secure town planning permission once David Thompson remained Prime Minister.
79. Around 24 April 2007 I received a telephone call from Sir Richard's office informing me that the first organisational meeting of Defendant No. 3 would be held at Sir Richard's office, the company's registered office on the 26th of that month.

80. On 26 April 2007 I visited Sir Richard's office for the purpose of attending the company's first organisational meeting.
81. I was handed the Agenda and asked to remain seated in the lobby with the son of Defendant No. 1.
- I attach and mark as Exhibit **"ELCs"** copies of the said Agenda for identification purposes.
82. Defendant No. 1 arrived and went directly into the inner office.
83. To my surprise, Defendant No. 2 and his assistant Terrence Thornhill turned up for the meeting. They walked directly into the inner office but not before Defendant No. 2 greeted me with a smile and a handshake and asked, "How do you do?"
84. In a matter of minutes Defendant No. 1's son and I were invited in but the boardroom we were taken to had only its furniture and remained so for the duration of my stay, save as explained below.
85. Pierre (Defendant No. 1's son) and I waited for the entry of Sir Richard.
86. Sir Richard did enter but said he has a problem.
87. Apparently Defendant No. 2 did not wish for me to be present at the meeting and declared that he would not enter the boardroom until I had left.
88. Sir Richard suggested that I leave for the sake of the company.
89. I refused.
90. He pleaded with me to leave and suggested that I should trust both he and Defendant No. 1, neither of whom would, according to him, do anything that would injure my interest in the company. He also said that it can't be disputed that the project is mine and further that at this stage of their lives, neither he nor Defendant No. 1 was intent on depriving anybody of the fruits of their labour.
91. By this time, Defendant No. 1 had joined us. When Sir Richard had finished speaking, he chimed in. He sought to persuade me to leave and finished by saying, 'Be still, do nothing. Don't speak about it'.
92. I refused but they insisted. I decided to leave but not without first saying to them that it could not be right that a director of a financial institution is attending a meeting of a company's directors and that the principal

director should have to leave to accommodate him; that I do not intend to be marginalised from a company which I had pioneered; that I did not come into the project as a real estate agent holding a project for them to develop but had developed the project myself.

93. Later I was told that the meeting never took place.

94. However in a subsequent conversation with Defendant No. 1's son, I 'picked up' that the meeting did in fact take place, whilst he was expressing his disbelief that Parris even asked why he was at the meeting.

95. I contacted Sir Richard several times by telephone protesting the basic principles. None of this was successful. My protests culminated in a letter to Sir Richard of 18 February 2008 requesting the return of all the documents submitted to him by me and those of and relating to the company.

I attach and mark Exhibit **"ELC9"** for identification purposes office copies of my letter to Sir Richard.

96. I spoke also with Defendant No. 1. He insisted that I just go along with the arrangement and take what I can at the end. I refused, told him no, that I would source the financing myself, as I had originally envisaged, 'repay him, Parris, Cheltenham and Antoine and proceed with the project on my own.'

97. He reminded me that even if I were to do this, I would never receive town planning permission.

98. When he told this to me, I bluntly replied that, in that case, I would rather stand poor with my dignity than to have my self-respect trampled in such a manner.

99. Thereafter I approached three entities Neal & Massy out of Trinidad and Tobago, Caribbean Financial Services Corporation here in the island and Robarin Holdings Limited out of the United Kingdom.

100. As a result I now have firm proposals from the former, the completion of which hinges only on the outcome of the present action.

I attach and mark Exhibit **"ELC10"** for identification purposes copies of Robarin's letter to me.

101. The relationship between the First Defendant and I changed dramatically. He maintains contact with me, pleading with me to abandon court action and take the deal.

102. Two days ago, 06 May 2008, he contacted me with an offer which is worse than what I had previously received, that is, to allow him and Sir Richard to hold the 10% offered to me because my involvement in the project, even though only by name, as previously suggested, is an offense to Leroy Parris who would rather not hear of my involvement with the project at all.

103. In other words, I should sit on the sidelines to facilitate the financing from Leroy Parris, take some 10% profit which would not even be registered in my name.

104. This is in my view unacceptable.

105. In the circumstances, I pray the orders sought by the Originating Summons herein filed.

AND I FURTHER MAKE OATH AND SAY THAT: -

106. The statements made in this Affidavit which are within my personal knowledge are true and correct.

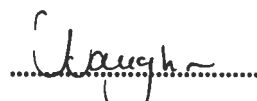
107. The statements made in this Affidavit which are not within my personal knowledge are true and correct according to the best of my knowledge, information, and belief.

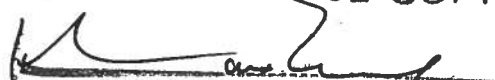
108. I swear this Affidavit in support of my application for relief under the *Companies Act of Barbados*.

SWORN by the said **EVERTON LEO CUMBERBATCH**)
at the Registration Office, Coleridge Street, Bridgetown)
on the 8th day of May 2008)



Before me:


.....
Legal Assistant

CERTIFIED A TRUE COPY

LEGAL ASSISTANT

This **AFFIDAVIT** is filed on behalf of Everton Leo Cumberbatch.