

## SUPERIOR COURT OF JUSTICE

5 B E T W E E N :

NELSON BARBADOS GROUP LTD.

Plaintiff

10 - and -

15 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 PHILIP GREAVES, GITTENS CLYDE TURNEY,  
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL  
LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE  
20 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  
25 INTERNATIONAL CONSULTANTS INC., THORNBROOK  
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,  
THE BARBADOS AGRICULTURAL CREDIT TRUST, PHEONIX ARTISTS  
MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY,  
C. SHOREY AND COMPANY LTD., FIRSTCARIBBEAN INTERNATIONAL  
30 BANK (BARBADOS) LTD., PRICEWATERHOUSECOOPERS  
(BARBADOS), ATTORNEY GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS,  
AND JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF  
VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY,

PETER SIMMONS, G.S. BROWN & ASSOCIATES LTD.,  
 GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC  
 INVESTMENTS LIMITED AND LIFE OF BARBADOS LIMITED c.o.b. as  
 LIFE OF BARBADOS HOLDINGS, LIFE OF BARBADOS LIMITED,  
 DAVID CARMICHAEL SHOREY, PRICEWATERHOUSECOOPERS EAST  
 CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH  
 CONSTRUCTION CANADA LTD. AND  
 COMMONWEALTH CONSTRUCTION, INC.

Defendants

P R O C E E D I N G S   A T   H E A R I N G

BEFORE THE HONOURABLE JUSTICE B. SHAUGHNESSY  
 on November 16, 2012 at OSHAWA, Ontario

APPEARANCES:

B. Greenspan

L. Silver

Counsel for Donald Best

Counsel for the Co-defendants

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Nelson Barbados Group Ltd. -and- Cox et al

FRIDAY, NOVEMBER 16, 2012

U P O N R E S U M I N G :

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5 THE COURT: Good morning, Mr. Greenspan.

MR. GREENSPAN: Good morning, Your Honour.

THE COURT: Mr. Silver.

MR. SILVER: It's nice to see you again, Your Honour.

10 THE COURT: Yes. It's been a while.

MR. SILVER: A couple of years. Mr. Ranking, I think he sent you a letter.

THE COURT: He did.

MR. SILVER: But he expresses his regrets.

15 THE COURT: I got all of the correspondence and I understood that. And I also understood that today's attendance was simply to set up further another date, I thought perhaps the hearing date in this matter. Now, is Mr. Best here?

20 MR. GREENSPAN: Yes, he is, sir.

THE COURT: Come forward, Mr. Best. Now, just have a seat, sir. I'm just trying to get you to the forefront. I'll make sure you hear everything that's going on here.

25 MR. BEST: Thank you, sir.

30 MR. GREENSPAN: Your Honour, if I may briefly just simply give you a very brief background? You may recall, Your Honour, on the last occasion perhaps, when I made the appearance before you on October 12<sup>th</sup>, that Your Honour commented on the apparent foreign territory that I had entered into. And I indicated that in relation to this matter that I

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Nelson Barbados Group Ltd. -and- Cox et al

had some experience in matters purely relating to

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civil contempt and I was content to proceed.

Having said that, subsequent to that appearance it became apparent very shortly thereafter that there was a dimension to the matter which would enter into areas that were for me foreign territory.

THE COURT: I suspected once you saw Mr. Silver and Mr. Ranking you might have reason to posit.

MR. GREENSPAN: Right.

THE COURT: But that doesn't take away from the feelings I have about this right now. I'm just going to leave it at that. I interrupted you. You continue.

MR. GREENSPAN: No, sir, and quite frankly, I want to make clear I attempted to get the assistance and engage civil counsel to become involved with me in the matter to see whether we could work it out in that fashion. And that did not unfortunately work out and become an approach that was a viable approach to dealing with this.

THE COURT: And there was a Mr. Davis.

MR. GREENSPAN: Yes, that's correct.

THE COURT: Is that not referred to?

MR. GREENSPAN: That's correct. Mr. Davis became briefly involved in the matter. Having said that, I now find myself, and it is unfortunate for the matter, unfortunate for Mr. Best, unfortunate in terms of proceeding, where I really feel it would be inappropriate for me to continue in this matter. And that's been fully explained to Mr. Best during the course of the last several weeks. And there are aspects to this matter, which quite frankly in

5 terms of the civil rules the matter in which one  
must - the myriad of rules with which I'm totally  
unfamiliar and the manner in which this matter  
appears to be proceeding, which are simply outside  
my area and my scope of experience. And I think  
that Mr. Best would not be well-served by my  
continuing in any capacity, so that perhaps the  
10 position that I find myself in, that has been  
explained to Mr. Best, there has subsequently been  
- we advised Mr. Silver and Mr. Ranking at the - as  
soon as that decision was made. There has been  
now, subsequent to that decision, there has been  
15 some direct communication between Mr. Best and Mr.  
Silver and Mr. Ranking. And the one matter I would  
indicate is that Mr. Best did provide and has  
provided to Mr. Silver and Mr. Ranking a method of  
communication by way of facsimile and a place where  
20 he can be properly served by way of fax service.  
And that is the current state of where the matter  
lays. It would appear that - and I apologise  
because I didn't appreciate this aspect of it, but  
I understood that my departure from the record  
25 would be on consent, consent of Mr. Best. And in  
those circumstances I was advised, I hope not  
incorrectly, that it was necessary for me to  
actually file a formal motion with the Court to be  
removed. If I have been remiss in that regard, I  
30 apologise for being unfamiliar with the rules. But  
I was told by civil counsel that I needn't actually  
provide materials in circumstances where my removal  
was on consent, at least with the consent of the

client. Unless Your Honour has any questions of me, I really have no submissions to make.

THE COURT: I will, but I'm going to hear from Mr. Silver first, but I definitely have questions.

MR. SILVER: Well, Your Honour, you know, and I won't remind you, because I don't think it's necessary today, of the history of this matter and Nelson Barbados bringing an action in Ontario that was ultimately, permanently stayed and really found to be an abuse of process, a forum-shopping exercise. And through that process and in respect of costs we sought certain relief against Mr. Best, which resulted in orders that required him to attend for examinations and produce documents relevant to the issues, and the contempt finding that followed that. And so, you know, after a lull of a couple of years of not having heard and as you recall, we actually spoke to a settlement before you and filed with you minutes of settlement settling the action as against all of the other parties. And Mr. Best was nowhere to be seen through that period. Mr. Greenspan then obtains a kind of ex-parte order or an ex-parte attendance for directions. And one of the directions that he obtains or that you provide him, August of this year is a temporary lifting of the repercussions of the contempt finding, namely the bench warrant.

THE COURT: And on for the purposes of instructing Mr. Greenspan in relation to this matter.

MR. SILVER: Yes.

THE COURT: That was the basis of the application.

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MR. SILVER: Right. And the matter was returnable on October 12<sup>th</sup>. We got notice of it a couple of weeks before that. And Mr. Greenspan and I, it may be coming from the different backgrounds, civil and criminal, there was a miscommunication about the October 12<sup>th</sup> date. But on October 12<sup>th</sup>, Mr. Greenspan appeared, not believing that it was really necessarily a consent matter and obtained an order from you, putting it over to today. And as you say, it was really to be spoken to today because the game plan at that time was we, Ranking and I, made it clear that we wanted to cross-examine on the affidavit that's been filed in support of the request.

THE COURT: Yes.

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MR. SILVER: And that was going to take place before today. And then we were going to come back and speak to it today to set a schedule that took your schedule into consideration and Mr. Greenspan's. And so that was what we were intending to do. Of course, that didn't happen because now Mr. Greenspan is getting off the record. And Mr. Best writes a letter to you, I think, or to all of us indicating that he now needs three or five more months and more time. And so, in the context of that it seems as though your direction is required to ensure that this motion that's been brought to set aside the contempt finding is dealt with on an expeditious and proper basis because right now there's a lifting from the October 12<sup>th</sup> order. The October 12<sup>th</sup> order,



5 paragraph two, orders the stay of the execution,  
the arrest warrant shall be extended to the date  
set for the hearing of this application. And so,  
if Mr. Best has his way based upon the letter that  
he wrote, he'd like this thing put off for three  
months to find new counsel, start a process, and  
all the while there would be a lifting of the  
arrest warrant. And we're not comfortable with  
that. In my respectful submission, and I don't  
10 stand here today seeking that it be lifted  
immediately, the stay of execution, what I propose  
is as follows: that Mr. Best be provided with a  
reasonable period of time to retain new counsel, a  
couple of weeks, maybe three, in my submission; if  
15 by that time he's retained new counsel, a notice of  
change of solicitors could be filed and we'll have  
new counsel who we can speak with; if new counsel  
hasn't been located or retained, a notice of intent  
to act in person should be filed. I'm not sure of  
20 Mr. Greenspan's position in the interim because we  
know, he may not, that until either one of those  
documents or an order removing him from the record  
is filed he remains counsel of record. And that's  
not a situation that I want to force on him or I'm  
25 asking to force on him. But in the meantime, if  
he's removed from the record today, for example,  
then Mr. Best is acting on his own in the meantime.  
And we would be entitled to, as Mr. Ranking has set  
30 out in letters, not a fax number for service, but  
knowledge as to where he is residing and where he  
can be served properly with papers. That goes away

5 if a notice of change of solicitors comes in, in  
which case he can be served by serving his counsel.  
And so, I say that there should be a reasonable  
period of time to retain counsel, a couple of  
weeks, and then some clarification of whether Mr.  
Greenspan is remaining the counsel of record until  
then or until then he's acting on his own.  
10 Secondly, there was a cost award made in the  
context of the contempt proceedings. And you won't  
remember all of this, but there were really three  
orders that you made that are involved here:  
November 2<sup>nd</sup>, 2009; December 2<sup>nd</sup>, 2009; and January  
15<sup>th</sup>, 2010. And in your January 15<sup>th</sup> order,  
15 paragraph 10, cost awards are made payable within  
30 days. Fifty-odd grand - I have the precise  
numbers, but it's a total of about \$70,000, most of  
it to Mr. Ranking's clients because, as you recall,  
he took the lead on all this, and 13,230 to my  
20 clients, Mr. Roman's clients and Ms. Clarke's  
clients. So, secondly, I would submit that there  
should be an order that within that same period of  
time to retain counsel or file a notice of intent  
to act in person the cost awards reflected in  
25 paragraph 10 of your January 15<sup>th</sup>, 2010 order  
should be satisfied. There should be no ability to  
play the game, the litigation, or be involved in  
the litigation forum without at a minimum  
30 satisfying those cost awards. Thirdly, I submit  
that it would be appropriate to schedule a date for  
and order a date for the cross-examination of Mr.  
Best on his affidavit filed in respect of this

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application. And in that regard, Mr. Ranking and I are available on any of December 3<sup>rd</sup>, 5<sup>th</sup> and then this is our second choice, January 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> or 11<sup>th</sup>. Next, I submit that it would be appropriate to, once we've determined if you order a date for the cross-examination to take place, that you then also order a new date to come back and speak to the matter again, similar to what we were intending to do today, but it just gets pushed back to a date after the cross-examination. And if you made those orders, it would be reasonable to extend the temporary stay to that date, i.e. the date that you order it to be returned before you to be spoken to, again. One other item that I would ask be addressed is neither Mr. Ranking nor I have filed notices of appearances, specifically because we had asked Mr. Best through Mr. Greenspan to confirm that they wouldn't be seen as an attornment to jurisdiction and/or a fresh step in the event that it was decided that a motion to strike be brought. We haven't gotten that from Mr. Best. And so, I'd request an indication in your endorsement that we may both file the notices of appearances with those reservations in that it wouldn't be an attornment to jurisdiction and it wouldn't be - it would be without prejudice to a motion to strike.

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THE COURT: Just one second. Yes.

MR. SILVER: And then last comment is that in respect of costs, I would ask that costs be reserved, costs of today be reserved to the return of the application or to the to-be-spoken-to

attendance. I guess it's more appropriate to the return of the application. Subject to any questions....

5 THE COURT: Yes, I have one, Mr. Silver. The history, and my concerns are well documented in the prior proceedings, I can't give you a date, chapter and verse, but it's there, do you have an actual address for Mr. Best? I mean where he's residing and a telephone number. I'm told you've been given a fax number, but I don't want to get into the same type of difficulty that we encountered back in late December 2009/early January 2010. So, do you have that information?

10 MR. SILVER: No, sir. The only thing that we have is a fax number, the fax number that was provided to us through Mr. Greenspan. And Mr. Ranking has made repeated requests for the additional information, but it hasn't been forthcoming. And then as I look back in the order there was an address that you ordered would constitute valid service.

15 THE COURT: But this is what I'm referring to, is the whole postal box.

20 MR. SILVER: You got around - you found a way around the postal box because I think Ranking found an address, I recall, on Princess Street. And you ordered that if anything is sent to Princess Street - but that was in '09 and we've had no contact with Mr. Best and we have no idea. I note that his affidavit, one of them, seemed to be sworn while he was in Singapore. And then there's some

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indications in his current material that he hasn't been around.

5 THE COURT: That's what concerns me. And I'm speaking to both counsel. Mr. Greenspan is held in highest regard by this court. And on his representation - on his representation, I permitted an ex-parte application to be heard in August on his representation that Mr. Best was out of the country. It's obvious to me he couldn't come back into the country because there was a warrant for his arrest. I, nevertheless, suspended it. And the reason I suspended it was for Mr. Best to instruct Mr. Greenspan. It was on that representation, which is a - coming from Mr. Greenspan is a very significant representation, one I took very seriously. But I am dismayed about where we are now and the kind of letters that Mr. Best has sent to the trial co-ordinator and for which I'll file all those letters in for the purposes of the record so any court review can look at exactly what's been exchanged here. But what I'm concerned about is I've been through this process before and I'm not prepared to play a cat-and-mouse game any further in relation to this proceeding. And I might say, Mr. Greenspan, as you know, the civil contempt is a quasi-criminal. It's a quasi-criminal proceeding. But I want as a minimum today the address at which Mr. Best resides and until Mr. Best - until counsel are able - and a telephone number that he can be reached at. And until Mr. Best - counsel, Mr. Silver and Mr.

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5 Ranking, it looks like the only two, until they can  
confirm that, I'm sorry, but you'll remain on the  
record until we get to the proper procedure here of  
a notice of intent to act in person. And so, I am  
prepared to give Mr. Best some time to retain  
counsel. The correspondence I read from him I  
found quite difficult to appreciate. Maybe Mr.  
Greenspan can enlighten me, but I don't know why it  
10 would take 15 months to get a lawyer here. I'm not  
re-doing - I'm not hearing an appeal of the *Nelson  
Barbados* case. It's been done. I don't know over  
how many years I had it, but it seems to me two to  
three years. I'm not an appellant court. I'm  
15 dealing with a singular issue, by the way, in which  
Mr. Greenspan's office has filed good, voluminous  
material. The material is there. There is not  
much more that has to be filed. I'm dealing with a  
singular issue, which is Mr. Best wants to purge  
20 his contempt. That's not neurosurgery here. So,  
in any event, that's the first step I want done  
today. I want the address. And I want Mr. Silver  
and Mr. Ranking to confirm that in view of the  
history that I've had with this. I'm not trying to  
25 fault with you, Mr. Greenspan, but I must say we  
can't - the amount of resources we've devoted to  
this case in terms of hours is insurmountable over  
the years. And I'm just not - and now, when I know  
that the issue is focused and narrow and what it  
30 is, I want there to be a proper way to deal with  
this as it would be in any other litigation matter.  
And until, as I say, that that information can be

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verified and a notice of intent to act in person is filed, Mr. Greenspan, you're staying on the record. I'm sorry, but I really don't have much other levers to hit here.

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MR. GREENSPAN: Sir, let me indicate, you know, obviously I'm dismayed by the fact that you're dismayed. And it's an uncomfortable situation for me to be in and virtually one that is unprecedented in my career. Having said that, I think I would be remiss if I didn't point out two - or at least respond in the following fashion: one, in the material that was filed on behalf of Mr. Best on the original application to seek directions from you and that's currently before the Court, Mr. Best deals with, I think quite extensively, his concerns with respect to his personal safety and the safety of his family, which motivated his desire not to reveal his residential address or the place where he, in fact, resided either in Canada or out of Canada. What is very, very clear, and I want to confirm to Your Honour when we made the representation to you in August that we needed to stay the arrest warrant in order for Mr. Best to return to Canada. I want to make it clear that, in fact, representatives of my office met Mr. Best at the airport on his return to Canada, after the order that Your Honour made, in order to ensure that he would not face any problems in relation to clearing Customs and Immigration if there had been some notation in the computer records with respect to the arrest warrant. And so, we wanted to make

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sure that there would be no problem. And, in fact, a member of my staff was present in order to ensure the smooth passage back into Canada. So, in fact, he was out of the country until that time. He returned subsequent to Your Honour's order in August. And that should be clear on the record. Subsequently, quite frankly, I don't have his address. We've communicated by telephone or email and his attendances at my offices. But he has always had and continues to have safety concerns. In terms of how or what might satisfy Your Honour, what might satisfy Mr. Silver and Mr. Ranking as to how many contact numbers might be available, I think that if you might consider either email or a telephone and a fax rather than an actual residential address....

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THE COURT: I can't. I can't. And I'll tell you why. Mr. Greenspan, just as a reminder, a great deal of time dealt with the whole issue of the safety of Mr. Best. And then Mr. McKenzie, the counsel, apparently was representing Mr. Best. And an extraordinary amount of money is spent obtaining former FBI individuals, who were then consultants, who rendered opinions, who examined this in great detail. I can think of one. There was probably two. And frankly, I made decisions. There was no substance to any of that. So, why - why am I - why would I get concerned now? And it's not Mr. Best is walking around with private security guards at the present time. But having said that I've been through that issue in detail. And I found no



substance to it, whatsoever.

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MR. GREENSPAN: In that case, sir, again, I felt obliged to make that submission. I didn't fully appreciate it, appreciate that that matter had been fully canvassed before you in the past. It is in - you know, again, that material is in the affidavit that we prepared on Mr. Best's behalf. And otherwise, Your Honour, I'm obviously - I will remain available and make appearances as Your Honour requires. And I'm hopeful that this matter can be moved to other counsel expeditiously. Here you are.

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THE COURT: Do you have other comments to make or maybe I should be asking Mr. Best about some of the terms though that Mr. Silver outlined, for example, the costs, I don't even know what the total is, but it looks like it's around 83 to \$100,000. I'll get it more specifically from Mr. Silver, why those costs should not be paid.

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MR. GREENSPAN: Your Honour, I think with respect to these issues, these were some of the issues that arose, which I felt were outside my area of both expertise and experience. I want you to know that my entire career, I think, I've spoken to costs once and that was with respect to a Charter motion. I really don't feel comfortable addressing it. And that was one amongst other issues that kept emerging, which was what caused my concern and the difficulty that I thought I faced. So, I think that Mr. Best is best to deal with or address that issue.

THE COURT: Mr. Best.

MR. BEST: Good morning, Your Honour.

THE COURT: Why should the costs not be paid?

MR. BEST: I'm sorry, I didn't hear you, Your Honour.

THE COURT: Why should the costs that I directed in orders, I guess it's the January 15<sup>th</sup>, 2010 order, why should they not be paid?

MR. BEST: Your Honour, I'm frightened to death to speak. I uh, I need a lawyer. I - I'm not qualified. If Mr. Greenspan doesn't know about costs, how could I? I - I would like to point out, Your Honour, that I did not send you a letter this week uh....

THE COURT: You sent it to the trial co-ordinator, didn't you?

MR. BEST: No, no, sir.

THE COURT: Oh, to counsel.

MR. BEST: No, Your Honour. Your Honour....

THE COURT: No, you sent it to counsel.

MR. BEST: Yes, Your Honour, but you specifically ordered all counsel and me not to send you letters. So, I didn't do that.

THE COURT: No and you're right about that in the past. I wanted it stopped.

MR. BEST: Yes, you said it was improper. And I - I didn't want to do that, Your Honour. I - I have the letter that I sent to the counsel, but I did not intend that it go to you, Your Honour. And - and I would never disobey your order.

THE COURT: All right, well, then the fact is I've

got it and....

5 MR. BEST: I need a lawyer, Your Honour, and after  
- Mr. Greenspan, he's a wonderful man, but after 16  
months and 40 or \$50,000, I - I'm told I need a  
civil lawyer and I - he's right. He's right. And  
I need uh, time to - to get the uh, lawyer, Your  
Honour.

10 THE COURT: You know, Mr. Best, though I also  
recall just by memory - there's so many transcripts  
I can't pull them out right now, but I actually  
found and made a specific finding that you are a  
very knowledgeable and experienced litigant having  
15 been involved in a number of major pieces of  
litigation similar to this one. And you were the  
plaintiff or nominee plaintiff in those cases and  
in some of them you acted with Mr. McKenzie. Am I  
wrong about that?

20 MR. BEST: Your Honour, to be a witness or a  
retired police officer is one thing. To be a  
lawyer is another. I need a lawyer. I just can't  
- I'm - I'm qualified. I - I don't know what to do  
or say. The lawyers sent me papers that I got. I  
25 don't know what to do with them except give them to  
my lawyer. I uh, I've set up a fax so that I can  
receive materials, Your Honour.

30 THE COURT: No, the fax is not going to work. So,  
we might as well have this out right now. I want  
the address, where you're - and where you're  
presently residing. Secondly, I want a telephone  
number you can be reached at. It can be given to  
Mr. Silver. Mr. Silver and Mr. Ranking are from

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major law firms in Toronto. They're not about to disseminate the information. And if we're going to go back into the whole argument about your safety issue, which you put in the affidavit, well, you heard my comments to Mr. Greenspan. I have spent days, in fact, I would say weeks on that issue, indeed had to review expert reports, et cetera. And I frankly dismissed that concept.

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MR. BEST: Your Honour, I - I hear you. I know that just a few weeks ago one of uh, my witnesses, Mr. John Knox, was kidnapped at his home, tied up, pistol whipped. He has uh, brain injuries. And he was told, I am told, by the Royal Barbados Police Force, who uh, became involved or made arrests, 15  
that one of the suspects is by coincidence or otherwise associated with Mr. Cox, one of the defendants.

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THE COURT: How many Cox are there on that island? And they're all, one way or another, related to one another.

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MR. BEST: I understand. I'm told he lives on the land, the Kingsland, Your Honour. But in any event, I - I need a lawyer. I - I'm not qualified and I need a lawyer. I uh....

THE COURT: Well....

MR. BEST: I need a lawyer, Your Honour.

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THE COURT: I hear you. I'm going to get you a chance to get a lawyer, but you're also going to give Mr. Ranking your address where you're residing and a telephone number that you can be reached at. And that's going to happen today, now.

MR. BEST: With respect, Your Honour, that would put my family in jeopardy.

THE COURT: And I'm satisfied it would not.

MR. BEST: Then I must go to jail.

THE COURT: Well, then right now, Mr. Best, I'm going to ask that you enter into the prisoner's dock.

MR. BEST: Yes, Your Honour.

THE COURT: And I need security. I think we're just going to let matters cool down here for a few minutes, so counsel are going to have to just - while I briefly speak to other matters. I'll call you back and we'll deal with this, again.

...OTHER MATTERS SPOKEN TO

THE COURT: Mr. Greenspan, do you want to speak to Mr. Best?

MR. GREENSPAN: If I could just a minute, Your Honour? And I would ask, if possible, if we could do it momentarily. I had not anticipated the time that this has....

THE COURT: I'm prepared to give a brief recess for you to speak to him.

MR. GREENSPAN: Thank you very much, sir.

THE COURT: Just while I'm doing it so I don't forget to do it, the correspondence then that's been sent to me from Faskens Cassels Brock, which includes correspondence of Mr. Best, for the purposes of the record today will be marked as exhibit A for identification purposes.

EXHIBIT A: Correspondence to His Honour from Faskens Cassels Brock - Produced and Marked.

## R E C E S S

5 U P O N R E S U M I N G :

THE COURT: Mr. Greenspan.

10 MR. GREENSPAN: Your Honour, I've had a discussion with Mr. Best and I hope that this proposal meets with your approval. It's not quite what Your Honour had asked for, but it has the - I think it's in the same spirit, that I - and I'll provide - I'll remain active in this issue with respect to this issue in order to provide the conduit to Mr. Silver and to Mr. Ranking. It's proposed that no later than Monday noon I will provide to Mr. Silver and to Mr. Ranking an address and phone number. And in order to ensure speedy enforcement of any breach of that undertaking I would propose - and I don't know whether the date is convenient to you, 20 but I would propose that failing - failing me providing Mr. Silver and Mr. Ranking with an address and phone number by noon Monday, Mr. Best will be required to attend in this court, nine-thirty, on Tuesday morning. I trust that that - I'm hoping to break the log jamb on this. There are - I appreciate Your Honour's previous rulings, but there are individual perceptions of things that have happened, both in the past and in the near past and in the end of the litigation, which lead 30 Mr. Best to take a position that there is an issue with respect to the protection of his family. And this can accommodate both Mr. Best's concerns and

5 the Court's concerns that an address and phone number be provided to counsel. And that's the only delay that's being sought is over the weekend. And by Monday noon that can be accomplished.

10 THE COURT: See, I have no difficulty asking or directing that Mr. Ranking and Mr. Silver would be required to keep that address in confidence and would only use it for the purposes of facilitating service in these proceedings and, of course, if I want the address as well for some other purpose. I suspect, Mr. Silver, that wouldn't pose a difficulty for you or Mr. Ranking. And you are speaking for Mr. Ranking, as well, today?

15 MR. SILVER: Yeah, I spoke to him on the phone during the recess and that would be fine. That would be understood, but it makes sense to direct it. In other words, then the only reason we want the address is for service purposes and for the purposes of the litigation.

20 THE COURT: Do you have any further submissions then on any other aspect of this?

25 MR. SILVER: Not without repeating the submission. I mean if I'm right, you would be directing in respect of this issue on the address and the phone number. And then....

THE COURT: I go back over your points, but...

MR. SILVER: Right.

30 THE COURT: ...right now this cost issue I think is going have to be left in advance. I don't know how to handle that. But I have another two matters that I do want to raise with you: one is I would

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like Mr. Best to surrender his passport also by Monday at noon; two, Mr. Greenspan's office and Mr. Greenspan to hold his passport until he gets further direction from this court. And also in these circumstances because I don't know what kind of residence Mr. Best is going to secure, but I would like him reporting to the Durham Regional Police on the first and third Monday of each and every month to confirm his current address and telephone number. And, Madam Registrar, the station that is open and available I just want the address for it, the one we see when we have a probation order.

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COURT REGISTRAR: It's at 77 Centre Street in Oshawa, Your Honour.

THE COURT: 77 Centre Street, Oshawa. All right, just give me a second here.

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MR. GREENSPAN: Your Honour, sorry to interrupt. I should point out just as a matter - I took a look. This Monday is the third Monday. So, would you want the report to take place this coming Monday, as well? I just....

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THE COURT: I think it could because he's going to be out today. He's going to be out in three minutes here.

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MR. GREENSPAN: Yeah, so I just wanted to make sure that we were on the same page and that we realise that Monday, the 19<sup>th</sup>, is the third Monday.

MR. SILVER: Could I just address one - and you might have made your decision to defer the costs to another day, but I do point out that Mr. Best, in



his affidavit of April, the 12<sup>th</sup>, of 2012...

THE COURT: Mmhhh.

MR. SILVER: ...which is I imagine the affidavit that was first before you...

THE COURT: Yes.

MR. GREENSPAN: ...at paragraph 75 says that:

...that in the order of January 15<sup>th</sup> Justice Shaughnessy further ordered that I pay the costs of the motion as follows....

And he's got the - to Mr. Ranking he's got the exact amounts set out in his affidavit. So, to the extent that your concern is about his knowledge of the obligation to pay and the amounts, he covers that himself in his own affidavit.

THE COURT: There's another component here, Mr. Silver. I don't - and I don't want to put Mr. Greenspan in a disposition, I don't know about his ability to pay. Certainly, he has knowledge of what he has to pay. I never had a doubt about that. But it's his ability to pay. And then I have to put it into the context of him retaining new counsel. So, at this point in time, I'm not prepared to - I'm not prepared to deal with that issue at this time. If I adjourn the - we have the three-week sittings. When do they end, Jannine?

COURT REGISTRAR: They finish on the 7<sup>th</sup> of December, Your Honour, the Friday. So, the Monday is the 10<sup>th</sup>.

MR. SILVER: Tenth.

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MR. GREENSPAN: Your Honour - and I'm sorry to rise, but if you're contemplating a return date the week of December 10<sup>th</sup> for any aspect relating to this, in the event that I'm still on the record could you make it December 11<sup>th</sup> if possible?

THE COURT: Sure.

MR. GREENSPAN: I'd appreciate it.

THE COURT: That's not a problem.

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MR. GREENSPAN: Yeah, no, it's the only day that week that I'm not in court elsewhere.

THE COURT: Well, hopefully you won't have to come, but....

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MR. GREENSPAN: I'm hoping not, as well, but just in case I wanted to - and I'm sorry, I didn't ask Mr. Silver about that.

MR. SILVER: Well, my own situation is that I'm scheduled for a right-hip replacement on December 6<sup>th</sup>.

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THE COURT: So, you won't be around on this date.

MR. SILVER: Well, I don't think I'll be around on the 11<sup>th</sup>, but there'll be some - either Mr. Ranking will come for both of us or I'll find somebody else in my office.

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THE COURT: Let me read you what I've endorsed so far. You'll get a copy of the endorsement.

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ENDORSEMENT

SHAUGHNESSY, J. (Orally):

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Mr. Best wishes to retain new counsel. I hereby  
adjourn this application to December 11<sup>th</sup>, 2012 at  
9:30 a.m. to permit Mr. Best to retain new counsel  
or alternatively to confirm that Mr. Best has filed  
a notice of intention to act in person.

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Mr. Greenspan shall remain counsel of record until  
at least December 11<sup>th</sup>, 2012, being the return date  
of this application.

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Mr. Greenspan shall provide to Mr. Ranking and Mr.  
Silver the address of the residence at which Mr.  
Best is residing on or before noon hour on Monday,  
November 19<sup>th</sup>, 2012.

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Mr. Ranking and Mr. Silver will keep the address  
and telephone number confidential and will use the  
information only for the purpose of conducting this  
present litigation.

25  
The cross-examination of Mr. Best on his affidavit  
material is set for January 11<sup>th</sup>, 2013 on notice re  
location and time.

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I hereby find and direct that Mr. Ranking and  
Silver on behalf of their respective clients may  
file a notice of appearance without this step being  
viewed as an attornment to the jurisdiction.

I further find and direct that Mr. Ranking and

5 Silver on behalf of their respective clients may bring any motion to strike the application without such step being considered a fresh step in the proceeding.

10 I further order and direct that my order staying the execution of the warrant shall be amended to further provide that: one, Mr. Donald Best shall surrender his Canadian passport or any other passport to Mr. Brian Greenspan. Mr. Greenspan shall retain the passport until further order of this court. The passport is to be surrendered to Mr. Greenspan on or before Monday, November 19<sup>th</sup>, 15 2012 at twelve noon.

20 Mr. Best will present himself at the Durham Regional Police Station, 77 Centre Street, Oshawa every first and third Monday of the month to confirm his current address and telephone number.

25 Mr. Best will also promptly notify Mr. Ranking and Silver of any change in his address or telephone number.

30 This application will be adjourned to January 25<sup>th</sup>, at 9:30 a.m. to be spoken to re setting date for hearing.

Costs of today reserved to the hearing of the application.

Anything else?

MR. SILVER: I'm just a little bit confused about the December 11<sup>th</sup> date. That's just to speak to it, again?

THE COURT: Yes, because I want to come back and understand that there aren't any difficulties with the cross-examination dates, that the counsel has been appointed, if the counsel hasn't been appointed, then Mr. Best has filed his notice of intention to act in person. It's a monitoring date.

MR. SILVER: It's a monitoring date with the cross-examination take place after that and come back and argue the motion on the 25<sup>th</sup> of January.

MR. GREENSPAN: Yes.

THE COURT: Yeah, cross-examination is...

MR. SILVER: The 11<sup>th</sup>.

THE COURT: ...January 11<sup>th</sup>.

MR. SILVER: Okay.

MR. GREENSPAN: Yes.

THE COURT: I just want to monitor what's going to - and I'd sort of like to get Mr. Greenspan out of this one way or the other. So, I thought I had to pinpoint a date.

MR. GREENSPAN: I appreciate that.

MR. SILVER: Thank you.

MR. GREENSPAN: And I thank you for that, Your Honour. And as I understood it, December 11<sup>th</sup> we would know who would then be appearing on January 11<sup>th</sup>, whether it be new counsel or Mr. Best in his personal capacity.

5 THE COURT: Yes. And I saw in the letters that they actually sent Mr. Best the notice of intent to act in person, as well as the rule. So, it's not that he's unaware of what's happening.

MR. GREENSPAN: Okay. Thanks, sir. I appreciate it.

THE COURT: Thank you.

MR. GREENSPAN: Thank you, Your Honour.

10 THE COURT: And Mr. Best can step out of the dock. Thank you very much, officer.

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FORM 2  
 CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))  
*Evidence Act*

I, Gail Burch,  
(Name of Authorized Person)

certify that this document is a true and accurate transcript of the recording of  
 Nelson Barbados Group Ltd. in the

and- Cox et al Superior Court of Justice  
(Name of Case) (Name of Court)

held at 150 Bond Street East, Oshawa, Ontario  
(Court Address)

taken from \_\_\_\_\_, which has been certified in Form  
 Recording 2812-206-400668-20121116 1.

November 28, 2012  
(Date) (Signature of Authorized Person(s))

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