

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CL 1996/C330

BETWEEN FINANCIAL INSTITUTIONS SERVICES LTD. - PLAINTIFF

AND	CNB HOLDINGS LIMITED	1ST DEFENDANT
AND	CENTURY NATIONAL DEVELOPMENT LIMITED	2ND DEFENDANT
AND	DONOVAN CRAWFORD	3RD DEFENDANT
AND	VALTON CAPLE WILLIAMS	4TH DEFENDANT
AND	BALMAIN BROWN	5TH DEFENDANT
AND	REGARDLESS LIMITED	6TH DEFENDANT
AND	FORDIX LIMITED	7TH DEFENDANT
AND	SPRING PARK FARMS	8TH DEFENDANT
AND	ALMA CRAWFORD	9TH DEFENDANT

SUIT NO. CL 1997/C050

BETWEEN FINANCIAL INSTITUTIONS SERVICES LTD. - PLAINTIFF

AND	CNB HOLDINGS LIMITED	1ST DEFENDANT
AND	DONOVAN CRAWFORD	2ND DEFENDANT
AND	BALMAIN BROWN	3RD DEFENDANT
AND	VALTON CAPLE WILLIAMS	4TH DEFENDANT
AND	REGARDLESS LIMITED	5TH DEFENDANT
AND	DEBROC LIMITED	6TH DEFENDANT

Michael Hylton, Q.C., Mrs. Sandra Minott-Phillips and Miss Michelle Henry
for Plaintiff instructed by Myers, Fletcher and Gordon
Patrick Bailey instructed by Brady & Company for 1st, 2nd, 3rd, 6th, 7th, 8th
and 9th Defendants in Suit CL1996/C330 and for 1st, 2nd, 5th Defendants
in Suit CL 1997/C050
Anthony Pearson for 4th and 5th Defendants in Suit CL 1996/C330 and for
3rd, 4th and 6th Defendants in Suit CL 1997/C050

Heard on September 21, 22, 23, 24, 25, 28, October 1, 1998 and May 25, 1999.

CORAM: WOLFE C.J.

On the 28th day of April, 1998, it was ordered that the action in Suit CL 1997/C050 be consolidated with the action in suit CL1996/C330.

Both actions were commenced in the names of Century National Bank Ltd. and Century National Building Society. On January 21, 1998, by Order of Miss Justice Beckford, Financial Institutions Services Limited was substituted as Plaintiff in both actions. Leave was granted to both the Plaintiff and the Defendants to make such consequential amendments to their pleadings as might be necessary.

CLAIM - Suit CL 1996/C330

The Statement of Claim dated October 2, 1996, was amended, pursuant to an Order of the Master in Chambers dated December 19, 1996 and was further amended, pursuant to an Order of Miss Justice Beckford dated the 21st day of January, 1998.

The amended Statement of Claim contains sixty seven paragraphs. Laborious as it is, I am constrained to set them out as they explain in detail the relationship of each defendant to the plaintiff and the circumstances in which the liability of each defendant arises.

"1A. The Plaintiff is a company in which, pursuant to an Order of this Honourable court made on the 21st day of October, 1997, in Suit No. M-121 of 1997, the assets of Century National Bank Limited and all claims and rights to recover debt, damages or other compensation from persons liable to Century National Bank Limited are vested.

1B. Century National Bank Limited (hereinafter referred to as 'CNB') is and was at all material times a bank licensed under the Banking Act, 1992 and at all material times carried on business as bankers through various branch offices in the island of Jamaica. On July 10, 1996, the Minister of Finance assumed the temporary management of the Plaintiff pursuant to section 25 of the Banking Act.

2. The 1st Defendant is a company incorporated under the Companies Act and was at all material times the majority shareholder of CNB.

3. The 2nd Defendant is a company incorporated under the Companies act. The 3rd defendant owns 99.99% of the shares in the 2nd Defendant.

4. The 3rd Defendant was at all material times a director and the chairman of CNB, the 1st and the 2nd Defendants and a director of the 6th, 7th and 8th Defendants. The 9th Defendant is the 3rd Defendant's mother.

5. At all material times the 3rd Defendant, his wife Claudine, and his children Donovan and Sian, owned all the shares in the 6th Defendant.

6. At all material times the 3rd, 6th and 9th Defendants owned a majority of the shares in the 1st Defendant.

7. The 7th and 8th Defendants are companies incorporated under the Companies Act and were at all material times wholly owned subsidiaries of the 1st Defendant.

8. At all material times the 3rd Defendant was also the chief executive officer and an employee of CNB and was responsible for overseeing the day to day operations of CNB and he received a salary for these services.

9. At all material times, the 4th and 5th Defendants were directors and employees of CNB and received a salary for their services and the 5th defendant was the President of CNB.

10. At all material times the 4th Defendant was a director of the 1st Defendant, the 2nd Defendant and the 7th Defendant.

11. The 1st Defendant is indebted to the Plaintiff in the sum of \$235,887,984.90 being the debit balance outstanding as at September 15, 1996 in respect of the 1st Defendant's current account with CNB.

12. Interest continues to accrue on the said sum of \$235,887,984.90 at the rate of 65% per annum from September 16, 1996 until judgment or sooner payment.

13. By an instrument in writing made in or about the year 1991, the 2nd Defendant guaranteed to CNB payment of all sums due to CNB from the 1st Defendant. Despite demand, the 2nd Defendant has not paid the sums due to the Plaintiff from the 1st defendant or any part thereof.

14. The 2nd Defendant is indebted to the Plaintiff in the sum of \$251,608,398.43 being the debit balance outstanding as at September 15, 1996, in respect of the 2nd Defendant's current account with CNB.

15. Interest continues to accrue on the said sum of \$251,608,398.43 at the rate of 65% per annum from September 16, 1996 until judgment or sooner payment.

16. In order to induce CNB to grant the overdraft facilities referred to in paragraphs 11 and 14 hereof, and as security for its indebtedness to CNB, the 2nd Defendant created equitable mortgages by deposit of title deeds in favour of CNB over the lands comprised in the following certificates of title:-

- a. Volume 1207 Folio 345 - property known as Barry & Lloyd
- b.. Volume 957 Folio 291 - property known as land part of Negril;
- c. Volume 1237 Folio 151 - property known as Lot 4 Sterling Castle;
- d. Volume 1237 Folio 578 - property known as Apartment 54 Fisherman's Point;
- e. Volume 1209 Folio 914 - property know as Devon Penn, St. Andrew
- f. Volume 914 Folio 93 - a farm in St. Elizabeth.

17. The 5th Defendant is indebted to the Plaintiff in the sum of \$1,310,428.80 being the debit balance outstanding as at September 15, 1996 in respect of the 5th Defendant's current account with CNB.

18. Interest continues to accrue on the said sum of \$1,310,428.80 at the rate of 65% per annum from September 16, 1996 until judgment or sooner payment.

19. The 6th Defendant is indebted to the Plaintiff in the sum of \$5,180,590.63 being the debit balances outstanding as at September 15, 1996, in respect of the 6th Defendant's current accounts with CNB.

20. Interest continues to accrue on the said sum of \$5,180,590.63 at the rate of 65% per annum from September 16, 1996 until judgment or sooner payment.

21. By an instrument in writing made in or about the year 1992, the 3rd Defendant and the 9th Defendant guaranteed to CNB payment of all sums due to CNB from the 2nd Defendant. Despite demand, the 3rd and 9th Defendants have not paid the sums due to the Plaintiff from the 2nd Defendant or any part thereof. This instrument of guarantee is a printed document which was executed in blank by the said 3rd and 9th Defendants on the understanding that the 2nd Defendant was the principal debtor whose total indebtedness was being guaranteed. By executing the document in blank the 3rd and 9th Defendants impliedly authorized CNB to complete it by inserting the 2nd Defendant's name, the approximate date on which it was executed, and the word "unlimited".

22. In order to induce CNB to grant the overdraft facilities referred to in paragraphs 11 and 14 hereof, and as security for their indebtedness to CNB:

a. The 3rd Defendant created equitable mortgages by deposit of title deeds in favour of CNB over the lands comprised in the following Certificates of Title:

- i. Volume 1129 Folio 802 - 2A Sterling Castle, Red Hills
- ii. Volume 1127 Folio 720 - Lot 5 Sterling Castle

b. The 3rd defendant and the 9th Defendant created equitable mortgages by deposit of title deeds in favour of CNB over the lands comprised in the following Certificates of Title:

- i. Volume 1185 Folio 828 - Lot 1 Strata 298, Sterling Castle
- ii. Volume 1185 Folio 829 - Lot 2 Strata 298 Sterling Castle,

Red Hills.

- iii. Volume 1185 Folio 832 - Lot 5 Strata 298, Sterling Castle
- iv. Volume 1185 Folio 833 - Lot 6 Strata 298, Sterling Castle
- v. Volume 1185 Folio 834 - Lot 7 Strata 298, Sterling Castle

23. The 7th Defendant is indebted to the Plaintiff in the sum of \$2,469.80 and US\$484,584.33 being the balances outstanding as at September 15, 1996, in respect of the 7th Defendant's current account with CNB, and a US dollar demand loan, respectively.

24. Interest continues to accrue on the said sums of J\$2,469.80 and US\$484,584.33 at the rate of 65% and 16% per annum, respectively, from September 16, 1996, until judgment or sooner payment.

25. The 8th Defendant is indebted to the Plaintiff in the sum of \$35,615,443.31 being the debit balance outstanding as at September 15, 1996, in respect of the 8th Defendant's current account with CNB.

26. Interest continues to accrue on the said sum of \$35,615,443.31 at the rate of 65% per annum from September 16, 1996 until judgment or sooner payment.

27. By an instrument in writing made in or about the year 1991, the 2nd Defendant guaranteed to CNB payment of all sums due to CNB from the 8th defendant. Despite demand, the 2nd Defendant has not paid the sums due to the Plaintiff from the 8th Defendant or any part thereof.

28. The 3rd, 4th and 5th Defendants owed a duty of care and skill to CNB.

29. In breach of their said duty of care and skill the 3rd, 4th and 5th Defendants and each of them negligently caused and/or allowed CNB to enter into several transactions:-

Particulars of Negligence of the 3rd, 4th and 5th Defendants

Causing and/or allowing CNB to:-

- a. grant overdraft facilities to the 1st Defendant without proper and sufficient security;

- b. grant overdraft facilities to the 2nd Defendant without proper and sufficient security;
- c. grant a loan and/or overdraft facilities to the 6th, 7th and 8th Defendants without any or any proper security;
- d. enter into the First Trade/Tower Bank Transaction (particulars of which are set out in paragraphs 36 to 50 hereof);
- e. enter into Shelltox Transaction (particulars of which are set out in paragraphs 51 to 54 hereof);
- f. deposit funds with a financial institution ("the second First Trade Transaction") when it was patently unsafe to do so. (Particulars of the 2nd First Trade Transaction are set out at paragraph 55 hereof);
- g. enter into the Paddington Terrace Transaction (particulars of which are set out in paragraphs 56 to 61 hereof);
- h. make various payments to or for the benefit of the 3rd Defendant, which the 3rd Defendant was not entitled to, and which were not in the best interests of CNB. These payments are described in paragraphs 62 to 66 hereof under the heading "the Crawford Payments";
- i. make various payments to or for the benefit of the 4th Defendant, which the 4th Defendant was not entitled to, and which were not in the best interests of CNB. These payments are described in paragraph 67 hereof under the heading "the Williams Payments";
- j. operate various branches throughout the island without any or any proper supervision of the loan portfolios of the said branches;
- k. grant numerous loans and/or overdraft facilities without any or any proper security to various persons and entities including:
 - i. Serv-Wel of Jamaica Limited, a company controlled by Ray Hadeed.
 - ii. Ray Hadeed, a director of CNB.

iii Three C's Company Limited and Three C's Investments Limited, companies controlled by Aulous Madden, CNB's auditor.

I. Do the following:

i. On or about December 12, 1995, make a payment of US\$1,134,175.34 to Reliance Group of Companies Limited ("Reliance") to redeem preference shares allotted to Reliance by CNB when said payment and redemption were contrary to the terms of the share issue.

ii. Pay to Reliance the sum of US\$77,316.74 by way of dividend on said preference shares from sums other than profits and contrary to the terms of the share issue.

iii. Fail to record in CNB's General Ledger or financial statements the payment by CNB of the sum of US\$1,134,175.34 to Reliance.

30. As a result of the 3rd, 4th and 5th Defendant's aforesaid negligence CNB has incurred expenses and suffered loss and damage including the expenses, loss and damage particularized below.

PARTICULARS

a. The sum owing by the 1st defendant on its overdraft, being \$235,887,984.90 and interest;

b. The sum owing by the 2nd Defendant on its overdraft being \$251,608,398.43 and interest;

c. The sums owing by the 6th, 7th and 8th defendants, being

i. \$5,180,590.63

ii. \$2,469.80 and US\$484,584.33

iii. \$35,615,443.31
respectively, and interest;

d. The sum of US\$22,000,000.00, and interest;

e. The sum of US\$3,500,000.00, and interest;

f. The sum of US\$81,802.66 and interest

g. The value of property known as 1 Paddington Terrace and comprised in Certificates of Title registered at Volume 492 Folios 32 and 33;

h. The sums of:-

- i. US\$118,982.00
 - ii. US\$117,300.00;
 - iii. US\$64,774.90;
 - iv. \$152,888.58;
 - v. \$238,000.00;
 - vi. \$66,400.00;
 - vii. \$860,227.00;
 - viii. \$159,982.00
 - ix. US\$71,047.00;
- and interest.

i. The sums of:

- i. US\$87,339.00;
 - ii. US\$19,618.50;
 - iii. US\$19,618.50;
 - iv. US\$6,104.83;
 - v. US\$10,000.00
 - vi. US\$10,000.00;
 - vii. US\$25,000.00
 - viii. US\$4,927.00;
 - ix. US\$20,000.00
- and interest

31. Further and in the alternative, the 3rd, 4th and 5th Defendants, and each of them had a fiduciary duty to CNB including but not limited to a duty to:

- a. act in its best interests;
- b. act in good faith;
- c. enter into contracts and/or agreements which were in its best interests;
- d. exercise their powers as directors for proper purposes only;

- e. not misuse CNB's assets;
- f. not place themselves in a position where there would or alternatively, could be a conflict of interest between their duty to CNB and their personal interests;
- g. ensure that CNB was provided with adequate and proper security in respect of any overdrafts, loans or other credit advanced by CNB to its customers;
- h. ensure that CNB carried on its business in accordance with its articles of association, the Companies Act, the Banking Act, the Bank of Jamaica Act, and other relevant legislation and regulations.

32. In breach of their said fiduciary duties the 3rd, 4th and 5th Defendants and each of them caused and/or allowed CNB to enter into the transactions described in the particulars to paragraph 29 hereof.

33. As a result of the 3rd, 4th and 5th Defendants' aforesaid breaches of their fiduciary duties CNB has incurred the expenses and suffered the loss and damage particularized in paragraph 30 hereof.

34. Further and in the alternative, it was an express or alternatively an implied term of the contracts of employment of the 3rd, 4th and 5th Defendants that they would act in accordance with the duties set out at paragraph 31 hereof.

35. In breach of the aforesaid terms the 3rd, 4th and 5th defendants caused and/or allowed CNB to enter into the transactions described in the particulars to paragraph 29 hereof as a result of which CNB has suffered the loss and damage and incurred the expenses particularized in paragraph 30 hereof.

The First Trade/Towerbank Transaction

36. First Trade International Bank and Trust Limited ("First Trade") is a company incorporated in the Bahamas and a subsidiary of Transnational Group Limited ("Transnational") another Bahamian company. The 3rd Defendant was at all material times a Director, and the 4th Defendant, an alternate Director both of First Trade and Transnational.

37. On June 25, 1993, the Central Bank of the Bahamas gave "approval in principle" for First Trade to be registered and to carry on business of banking in the Bahamas. First Trade received a licence on September 2, 1993, and opened for business on October 3, and at all material times the share capital of First Trade was less than US\$6,000,000.

38. Towerbank Limited ("Towerbank") a Panamanian company, was a shareholder in Transnational at the material time, holding 18,000 or almost 9% of the shares in Transnational.

39. In or about December, 1993, CNB entered into two agreements with First Trade whereby it agreed to maintain deposits with First Trade "in reciprocity" for First Trade extending credit to the 1st Defendant and the 2nd Defendant.

40. Pursuant to those Agreements, between in or about December 1993 and in or about June 1994 CNB deposited US\$22,000,000.00 with First Trade, and First Trade lent US\$16,000,000.00 to the 1st Defendant and US\$6,000,000.00 to the 2nd Defendant. First Trade held the said deposits as security for the said loans.

41. The interest that was earned on those deposits between December 1993 and May 1995 was not paid to the Bank, but was applied against the interest payable by the 1st and 2nd Defendants in respect of the aforesaid loans.

42. During that period CNB's financial statements showed the deposits as part of its liquid funds as a readily reliable asset and did not disclose that they were subject to a restriction on use. This was in breach of standard accounting practice.

43. In May of 1995, first Trade set off CNB's deposits against the debts due from the 1st defendant and the 2nd Defendant.

44. In order to conceal the fact that CNB no longer had the sum of US\$22,000,000.00 on deposit and that its liquid funds has been reduced by that sum, a series of transactions were effected on or about June 28, 1995. By these transactions, Towerbank purported to lend US\$19.5 Million to the 1st Defendant and US\$6 Million to the 2nd Defendant. Those Defendants authorised Towerbank to credit the proceeds of the loans to a deposit account in the name of CNB and CNB agreed that Towerbank could hold those deposits as

security for the said loans, and authorized Towerbank to cancel the deposits and to set them off against the said loans to the 1st and 2nd Defendants.

45. The accounting records of CNB did not reflect the transactions referred to in paragraph 44 hereof, or the fact that First Trade had set off the deposit as aforesaid; CNB's accounting records instead gave the impression that CNB had moved its deposit from First Trade to Towerbank.

46. On November 15, 1995, First Trade resolved to and did go into voluntary liquidation.

47. By letter dated March 26, 1996, CNB authorized Towerbank to apply the interest earned on the deposit with Towerbank against the interest payable by the 1st and 2nd Defendants to Towerbank.

48. By letter purportedly dated July 9, 1996, Towerbank advised CNB that:

- a. CNB's deposits had earned interest in the sum of US\$2,295,000.00.
- b. That interest had been applied against interest owed by the 1st and 2nd Defendants; and
- c. Effective July 9, 1996, Towerbank cancelled CNB's deposits and applied the proceeds in settlement of the loans to the 1st and 2nd Defendants.

That letter was received by CNB after July 10, the date on which the Minister of Finance assumed temporary management of CNB.

49. By reason of the matters set out in paragraphs 36 to 48 hereof, CNB lost the said sum of US\$22,000,000.00 and interest.

50. The Plaintiff is entitled to and claims to be subrogated to First Trade's rights against the 1st and 2nd Defendants.

The Shelltox Transaction

51. On or about March 30, 1995, CNB entered into an agreement with First Trade, whereby it agreed to maintain deposits with First Trade "in reciprocity" for First Trade extending credit to a

Bahamian company known as Shelltox Investments Ltd. (hereinafter referred to as "Shelltox").

52. Shelltox was incorporated for the purposes of this transaction and was at all material times owned and/or controlled by the 1st, 2nd, 3rd and/or 4th Defendants.

53. Pursuant to the said agreement, on or about March 30, 1995, CNB deposited US\$3,500,000.00 with First Trade and First Trade lent US\$3,500,000.00 to Shelltox.

54. By reason of the matters set out in paragraphs 51 to 53 hereof and/or First Trade's going into liquidation, CNB lost the said sum of US\$3,500,000.00 and interest thereon.

The Second First Trade Transaction

55. On or about October 7, 1993 CNB deposited the sum of US\$150,000.00 with First Trade, and as at November 15, 1995 a balance of US\$81,802.66 remained on deposit. As a result of First Trade going into liquidation CNB lost the said sum of US\$81,802.55 and interest thereon.

The Paddington Terrace Transaction

56. As at the 13th day of August 1991, CNB was the registered proprietor of property known as 1 Paddington Terrace, Kingston 6 in the parish of St. Andrew and comprised in Certificates of Title registered at Volume 492 Folio 32 and Volume 492 Folio 33 (hereinafter referred to as the "Paddington Terrace property")

57. On the 14th day of August 1991, the Paddington Terrace Property was transferred from CNB to the 6th Defendant, purportedly for a consideration of \$1,813,612.00.

58. As at the 14th day of August 1991, the Paddington Terrace Property had a market value in excess of \$1,813,612.00.

59. The said transfer was a sham and unenforceable in that, inter alia:

- a. It was not at arm's length;
- b. It was not for market value;

c. It was in breach of the 3rd Defendant's fiduciary duties to CNB.

60. Between 1991, and July 10, 1996, CNB paid various expenses incurred at the Paddinton Terrace Property.

61. The 6th Defendant has not accounted to CNB for the income received from the Paddington Terrace property since August 14, 1991.

The Crawford Payments

62. On or about the 21st day of December 1993 and the 18th day of April 1995 respectively CNB paid the sum of US\$118,982.00 and US\$117,300.00 to the 3rd Defendant.

63. In or about August 1994, CNB paid the sum of US\$64,774.90 to the 3rd Defendant, purportedly in reimbursement of the cost of a generator.

64. In or about the month of August 1995, CNB paid the sum of \$152,888.58 to "Flagger College" for expenses incurred by the 3rd Defendant's daughter.

65. During the 1994/95 financial year CNB:

a. Paid \$238,000 and \$66,400 to the 3rd Defendant for "household help" and "other help", respectively;

66. On or about May 27, 1996 CNB paid the sum of US\$71,047.00 to the 3rd Defendant, purportedly in reimbursement of the cost of a generator.

The Williams Payments

67. CNB paid:

a. Corbed Inc., a company incorporated in the United States and owned by the 4th Defendant and his wife, Claudette:

- i. US\$87,339.00 on or about December 21, 1993;
- ii. US\$19,618.50 on or about April 14, 1994;
- iii. US\$19,618.50 on or about June 22, 1994;

- b. to the 4th Defendant's wife, Claudette Williams:
 - i. US\$6,104.83 on or about December 21, 1993;
 - ii. US\$10,000.00 on or about April 21, 1994;
 - iii. US\$10,000.00 on or about June 23, 1994;
 - iv. US\$25,000.00 on or about August 15, 1996;
 - v. US\$4,927.00 on or about October 28, 1994;
 - vi. US\$20,000.00 on or about December 30, 1994.

AND THE PLAINTIFF CLAIMS:

1. Against the 1st defendant for:-
 - a. the sum of \$235,887,984.90 being the debit balance outstanding as at September 15, 1996 in respect of the 1st defendant's current account with CNB. Interest continues to accrue on the said sum at the rate of 65% per annum and the Plaintiff claims interest at that rate from September 16, 1996, until judgment or sooner payment;
 - b. the sum of US\$16,000,000.00;
 - c. the interest earned by CNB on the said sum of US\$16,000,000.00, but applied against the 1st Defendant's debt.
2. Against the 2nd Defendant for:
 - a. the said sum \$235,887,984.90 and interest thereon at the rate of 65% from September 16, 1996 until judgment or sooner payment and the said sum of US\$16,000,000.00 and interest thereon pursuant to its guarantee of the indebtedness of the 1st Defendant;
 - b. the sum of \$251,608,398.43 being the debit balance outstanding as at September 15, 1996 in respect of the 2nd Defendant's current account with CNB, with interest at the rate of 65% per annum from September 16, 1996 until judgment or sooner payment;
 - c. a declaration that the following certificates of title are subject to an equitable mortgage in favour of the Plaintiff as security for the 2nd Defendant's indebtedness to the Plaintiff:-

- i. Volume 1207 Folio 345 in respect of property known as Barry & Lloyds;
 - ii. Volume 957 Folio 291 in respect of property known as land part of Negril;
 - iii. Volume 1237 Folio 151 in respect of property known as Lot 4 Sterling Castle.
 - iv. Volume 1237 Folio 578 in respect of property known as Apartment 54 Fisherman's Point;
 - v. Volume 1209 Folio 914 in respect of property known as Devon Penn, St. Andrew;
 - vi. Volume 914 Folio 93 in respect of a farm in St. Elizabeth;
- d. an order that within 14 days of being requested to do so the 2nd Defendant do execute legal mortgages in favour of the Plaintiff to secure its total indebtedness to the Plaintiff;
 - e. an order that the Registrar of the Supreme Court do execute the said mortgages on behalf of the 2nd Defendant if the 2nd Defendant fails or refuses to execute same;
 - f. an order that the 2nd Defendant pay the costs of preparing and registering the said mortgages;
 - g. the said sum of US\$6,000,000.00;
 - h. interest earned by CNB on the sum of US\$6,000,000.00, but applied against the 2nd Defendant's debt;
 - i. the sum of \$35,615,443.31 and interest thereon at the rate of 65% from the 16th day of September, 1996, pursuant to its guarantee of the indebtedness of the 8th Defendant.
- 3. Against the 3rd, 4th and 5th Defendants for:-
 - a. The sum owing by the 1st Defendant on its overdraft, being \$235,887,984.90, and interest;

- b. The sum owing by the 2nd Defendant on its overdraft being \$251,608,398.43 and interest;
- c. The sums owing by the 6th, 7th and 8th Defendants, being
 - i. \$5,180,590.63
 - ii. \$2,469.80 and US\$484,584.33
 - iii. \$35,615,443.31
 respectively, and interest;
- d. The sum of US\$22,000,000.00 and interest;
- e. The sum of US\$3,500,000.00 and interest;
- f. The sum of US\$81,802.66 and interest;
- g. The value of property known as 1 Paddington Terrace and comprised in Certificates of Title registered at Volume 492 Folios 32 and 33;
- h. The sums of
 - i. US\$118,982.00;
 - ii. US\$117,300.00;
 - iii. US\$64,774.90;
 - iv. \$152,888.58;
 - v. \$238,000.00;
 - vi. \$66,400.00;
 - vii. \$860,227.00;
 - viii. \$159,982.00;
 - ix. US\$71,047.00;
 and interest.
- i. The sums of:
 - i. US\$87,339.00;
 - ii. US\$19,618.50;
 - iii. US\$19,618.50;
 - iv. US\$6,104.83;
 - v. US\$10,000.00;
 - vi. US\$10,000.00;
 - vii. US\$25,000.00;
 - viii. US\$4,927.00;
 - ix. US\$20,000.00;
 and interest;

- j. damages for breach of contract of employment;
 - k. damages for negligence;
 - l. damages for breach of their fiduciary duties;
 - m. an account in respect of any profits derived directly or indirectly as a result of the aforesaid breaches.
4. Against the 3rd Defendant for:
- a. The sums set out in paragraph 3 (h) hereof, being monies had and received by the 3rd Defendant for the use of CNB.
 - b. A declaration that the following Certificates of Title are subject to an equitable mortgage in favour of the Plaintiff as security for the 3rd Defendant's indebtedness to the Plaintiff;
 - i. Volume 1129 Folio 802 - 2A Sterling Castle, Red Hills.
 - ii. Volume 1127 Folio 720 - Lot 5 Sterling Castle;
 - c. an order that within 14 days of being requested to do so the 3rd Defendant do execute legal mortgages in favour of the Plaintiff to secure his total indebtedness to the Plaintiff;
 - d. an order that the Registrar of the Supreme Court do execute the said mortgages on behalf of the 3rd Defendant if the 3rd Defendant fails or refuses to execute same;
 - e. an order that the 3rd Defendant pay the costs of preparing and registering the said mortgages.
5. Against the 3rd and 9th Defendants for:
- a. a declaration that the guarantee executed by them in blank is a valid security issued in favour of CNB for the purpose of securing the indebtedness of the 2nd Defendant and that the Plaintiff is authorized to complete and act upon same, accordingly;
 - b. the sums of \$235,887,984.90, \$251,608,398.43, US\$16,000,000.00 and US\$6,000,000.00 and \$35,615,443.31

and interest, pursuant to the aforesaid guarantee of the indebtedness of the 2nd Defendant to the Plaintiff;

- c. a declaration that the following Certificates of Title are subject to an equitable mortgage in favour of the Plaintiff as security for the 3rd and 9th Defendants' indebtedness to the Plaintiff:
 - i. Volume 1185 Folio 828 - Lot 1, Strata 298 Sterling Castle.
 - ii. Volume 1185 Folio 829 - Lot 2 Strata 298 Sterling Castle, Red Hills.
 - iii. Volume 1185 Folio 832 - Lot 5 Strata 298 Sterling Castle
 - iv. Volume 1185 Folio 833 - Lot 6, Strata 298 Sterling Castle
 - v. Volume 1185 Folio 834 - Lot 7, Strata 298 Sterling Castle
 - d. an order that within 14 days of being requested to do so the 3rd and 9th Defendants do execute legal mortgages in favour of the Plaintiff to secure their total indebtedness to the Plaintiff;
 - e. an order that the Registrar of the Supreme Court do execute the said mortgages on behalf of the 3rd and 9th Defendants if they fail or refuse to execute same;
 - f. an order that the 3rd and 9th Defendants pay the costs of preparing and registering the said mortgages.
6. Against the 4th Defendant for the sums set out in paragraph 3(I) hereof being monies had and received by the 4th Defendant for the use of CNB.
7. Against the 5th Defendant for the sum of \$1,310,428.80 being the balance outstanding in respect of the 5th Defendant's current account and interest thereon to September 15, 1996. The Plaintiff also claims interest on the said sum at the rate of 65% from September 16, 1996 until judgment or sooner payment.
8. Against the 6th Defendant for:

- a. The sum of \$5,180,590.63 being the balance outstanding in respect of the 6th Defendant's current accounts and interest thereon to the 15th September, 1996. The Plaintiff also claims interest on the said sum at the rate of 65% from September 16, 1996 until judgment or sooner payment;
 - b. a declaration that the Plaintiff is the beneficial owner of premises known as 1 Paddington Terrace and comprised in Certificates of Title registered at Volume 492 Folios 932 and 933;
 - c. an order that within 14 days of being requested to do so, the 5th Defendant do execute a transfer of the said property to the Plaintiff's order;
 - d. an order that the Registrar of the Supreme Court do execute the said transfer if the 6th Defendant fails to do so;
 - e. an order that the 6th Defendant pay the costs of transferring the said property.
9. Against the 7th Defendant for the sums of J\$2,469.80 and US\$484,584.33 being the balances outstanding as at September 15, 1996, in respect of the 7th Defendant's current account and its US dollar demand loan, respectively. The Plaintiff also claims interest on the said sums at the rate of 65% and 16% respectively, from September 16, 1996 until judgment or sooner payment.
10. Against the 8th Defendant for the sum of \$35,615,443.31 being the debit balance outstanding as at September 15, 1996, in respect of the 8th Defendant's current account. The Plaintiff also claims interest on the said sum from the 16th day of September, 1996 at the rate of 65% until judgment or sooner payment.
11. Against the 1st, 2nd, 3rd 4th and 6th defendants for:-
- An injunction to restrain them and each of them, whether by themselves or their servants or otherwise howsoever from disposing of and/or dealing with their assets wheresoever situate until judgment or further order of the Court.
12. Against all the Defendants for:-
- a. Interest pursuant to the Law Reform (Miscellaneous

Provisions) Act;

- b. Costs;
- c. Such further relief as the Court may deem just.

Dated the 2nd day of October 1996."

In respect of paragraphs 11, 14, 16(a), 19, 23 and 25 of the amended Statement of Claim, judgment was entered in favour of the plaintiff prior to the matter coming on for hearing. Consequently, these matters no longer form part of the issues joined between the plaintiff and the defendants concerned.

DEFENCE

The first, second, seventh and eighth defendants having entered appearances did not file any defences in respect of the plaintiff's claims.

The third, fourth, fifth, sixth and ninth defendants all filed defences. In addition thereto, the fifth defendant filed a Counter-Claim against the plaintiff seeking damages for wrongful dismissal and in the alternative damages for breach of contract.

The defence of each of the abovementioned defendants as well as the counter claim of the fifth defendant are set out hereunder:

Defence of Third Defendant

- "1. Without prejudice to an express reservation hereby made of third Defendant's rights:
 - (i) to contend that the Statement of claim should be struck out as constituting an abuse of process of the court; and/or

- (ii) to contend that the Statement of Claim should be struck out for want of a reasonable cause of action; and/or
- (iii) to amend the Defence herein upon the provision of full and proper particulars by the plaintiff;

the Third Defendant pleads to the allegations made in the Statement of Claim herein as set out in the following paragraphs.

2. It is admitted that the Plaintiff is and was at all material times a bank licensed under the Banking Act which was subsequently amended on 31st December 1992 ("the Banking Act") and at all material times carried on business as bankers through various branch offices in the island of Jamaica. Save as aforesaid and save that it is admitted that on July 10, 1996, the Minister of Finance purported to assume the temporary management of the Plaintiff pursuant to section 25 of the Banking Act, paragraph 1 of the Statement of Claim is denied. The Minister's purported assumption of the temporary management of the plaintiff was effected without lawful authority and was not effected in accordance with the provisions of the Banking Act. The said assumption of temporary management of the Plaintiff was ultra vires, invalid and without any legal effect.
3. Save that the First Defendant became the majority shareholder of the plaintiff only after the First Defendant's incorporation on the 25th June, 1992, paragraph 2 of the Statement of Claim is admitted.
4. Save that it is denied that the third Defendant owns 99.99% of the shares in the Second Defendant, paragraph 3 of the Statement of Claim is admitted. The First Defendant is the majority shareholder of the Second Defendant.
5. Save that the Third Defendant only became a Director of the Plaintiff in September 1986 and Chairman in March 1989, paragraph 4 of the Statement of claim is admitted. At all material times the other directors of the said companies were as follows:-

CENTURY NATIONAL BANK LIMITED

Incorporated 16-7-1986 as Girod Bank Ltd.

Changed name to Century National Bank Limited 6th November 1986.

1987	Kenneth Norton Sherwood Raymond Elias Hadeed Alymer Desmond Blades Donovan Earl Crawford Afeef Assad Lazarus Ronald N. A. Henriques	Resigned 09-12-1987
1988	Kenneth Norton Sherwood Raymond Elias Hadeed Alymer Desmond Blades Donovan Earl Crawford Ronald N. A. Henriques Neville Roche	Appointed 02-01-1988
1989	Kenneth Norton Sherwood Raymond Elias Hadeed Alymer Desmond Blades Donovan Earl Crawford Ronald N. A. Henriques Neville Roche Ken Brown	Resigned 29-05-1989 Appointed 21-08-1989
1990-92	Raymond Elias Hadeed Alymer Desmond Blades Donovan Earl Crawford Neville Roche Ken Brown Valton Caple Williams	Resigned 07-04-1990 Appointed 21-8-1990
1993-95	Raymond Elias Hadeed Donovan Earl Crawford Neville Roche Ken Brown Valton Caple Williams Hon. V. Corrine McLarty - Dr. Henry Lowe	Appointed 23-03-1993 Appointed 23-03-1993 Resigned 09-08-1995

Rev. Dr. Cleve Grant	Appointed	23-03-1993
Balmain Brown	Appointed	18-05-1993
Neville Blythe	Appointed	18-05-1993
	Resigned	12-12-1995

Donovan Lewis	Appointed	18-05-1993
---------------	-----------	------------

1996	Raymond Elias Hadeed		
	Donovan Earl Crawford		
	Neville Roche	Resigned	31-07-1996
	Ken Brown		
	Valton Caple Williams	Resigned	29-02-1996
	Hon. V. Corrine McLarty		
	Rev. Dr. Cleve Grant		
	Donovan Lewis	Resigned	24-01-1996

CENTURY NATIONAL DEVELOPMENT LIMITED
Incorporated 16th August 1991

1991-95	Donovan Crawford		
	Neville Roche		
	Valton Caple Williams		
1996	Donovan Crawford		
	Neville Roche	Resigned	31-07-1996

SPRING PARK FARMS LIMITED
Incorporated 9th August 1993

1995	Donovan Crawford		
	Valton Caple Williams		

FORDIX LIMITED
Incorporated 28th March 1980
(Purchased by Holding Company in 1992)

1992-95	Neville Roche	Appointed	17-06-1992
		Resigned	31-07-1996
	Valton Caple Williams	Appointed	17-06-1992
	Donovan Crawford	Appointed	17-06-1992

REGARDLESS LIMITED
Incorporated 1984

1986-87	Donovan Crawford		
---------	------------------	--	--

Claudine Bullock

1988-96 Donovan Crawford
 Claudine Crawford (nee Bullock)
 Alma Crawford

CNB HOLDINGS LIMITED
Incorporated 25th June 1992

1992-95 Donovan Crawford
 Neville Roche
 Valton Caple Williams
 Raymond Hadeed
 Ken Brown

1996 Donovan Crawford
 Neville Roche Resigned 31-07-1996
 Valton Caple Williams
 Raymond Hadeed
 Ken Brown

6. Paragraph 5 of the Statement of Claim is admitted.
7. Paragraph 6 of the Statement of Claim is admitted. The employees of the Plaintiff own 17% of the shares in the Plaintiff. Raymond Hadeed owns 15% of the shares of the Plaintiff.
8. Paragraph 7 of the Statement of Claim is admitted.
9. 9.1 The Fifth Defendant was employed as President and a Director of the Plaintiff in June 1993.
 9.2 The Fourth Defendant was employed as Director of Operations (a senior managerial position) in 1988 and a Director of the Board of the Bank in September 1990.
 9.3 The Third, Fourth and Fifth defendants held and shared between them responsibility for overseeing the day to day operations of the Plaintiff. A significant proportion of daily business and administrative transactions were carried out by the fourth and/or fifth Defendants alternatively at their direction without recourse to the Third Defendant.

9.4 The Fifth Defendant was President and Director of the Plaintiff.

9.5 The Third, Fourth and Fifth defendants and each of them were entitled to receive and did receive a remuneration package and numerous compensation benefits from the Plaintiff.

9.6 Save as aforesaid, paragraphs 8 and 9 of the Statement of Claim are admitted.

10. Paragraph 10 of the Statement of Claim is admitted.
11. It is admitted that the First Defendant owes a debt to the Plaintiff in respect of its current account with the Plaintiff. No admissions are made as to the amount of such debt outstanding on September 15, 1996 or any date.
12. Paragraph 12 of the Statement of Claim is denied.
13. Paragraph 13 of the Statement of Claim is denied.
14. It is admitted that the Second Defendant owes a debt to the Plaintiff in respect of its current account with the Plaintiff. No admissions are made as to the amount of such debt outstanding on September 15, 1996 or any date.
15. Paragraph 15 of the Statement of Claim is denied.
16. It is admitted that the titles to one or more lands in Jamaica, the names, description and title numbers of which the Third Defendant is unable to recall, were mortgaged to the Plaintiff by the Second Defendant as security for obligations which the Second Defendant had to the Plaintiff. No admissions are made as to whether or not any of the said mortgages have or have not been discharged. No admissions are made as to the nature and extent of the obligations in respect of which the security was granted. Save as aforesaid, paragraph 16 of the Statement of Claim is denied.
17. Save that it is admitted that the Fifth Defendant has a current account with the Plaintiff, the Third Defendant does not plead to paragraphs 17 and 18 of the Statement of Claim.

18. It is admitted that the Sixth Defendant owes a debt to the Plaintiff in respect of one or more current accounts with the Plaintiff. No admissions are made as to the amount of such debt outstanding on September 15, 1996 or any date.
19. Paragraph 20 of the Statement of Claim is denied.
20. Paragraph 21 of the Statement of Claim is denied. The Third Defendant and the Ninth Defendant executed a guarantee as security for advances made by the Plaintiff to the Third Defendant and the Sixth Defendant and for no other purpose. There was no authority given to the Plaintiff to insert the name of the Second Defendant, and if any such insertion has been done, it has been done wrongfully without authority.
21. Paragraph 22 of the Statement of Claim is denied.
22. It is admitted that the Seventh Defendant owes a debt to the Plaintiff in respect of its current account with the Plaintiff. No admissions are made as to the amount of any such debt as at 15th September, 1996 or at any date. Save as aforesaid, paragraph 23 of the Statement of Claim is denied.
23. Paragraph 24 of the Statement of Claim is denied.
24. It is admitted that Spring Park Farms Limited owes a debt to the Plaintiff in respect of its current account with the Plaintiff. No admissions are made as to the amount of such debt as at 15th September 1996 or at any date.
25. Paragraph 26 of the Statement of Claim is denied.
26. Paragraph 27 of the Statement of Claim is admitted.
27. Paragraph 28 of the Statement of Claim is admitted
28. Paragraph 29 of the Statement of Claim is denied.
29. Paragraph 30 of the Statement of Claim is denied.
30. Save and except that:
 - (a) in respect of the duty pleaded at paragraph 31(g) of the Statement of Claim, the Third, Fourth and Fifth

defendant's duty was limited to such supervision as is reasonable and necessary to obtain the compliance of all the employees with the manual of the Plaintiff; and

- (b) in respect of the duty pleaded at paragraph 31(h) of the Statement of Claim, the third, fourth and fifth Defendants had no such duty where conditions existed or arose over which the said Defendants had no immediate control, such as illegalities arising from rapid changes in Banking Regulations, currency valuations or interest rates and so on,

paragraph 31 of the Statement of Claim is admitted.

- 31. Paragraph 32 of the Statement of Claim is denied.
- 32. Paragraph 33 of the Statement of Claim is denied.
- 33. Save and to the extent as pleaded in paragraph 30 above, paragraph 34 of the Statement of Claim is admitted.
- 34. Paragraph 35 of the Statement of Claim is denied.
- 35. Save that it is admitted that until 5th June 1995, the Third Defendant was a Director of First Trade International Bank and Trust Limited ("First Trade") and Transnational Group Limited ("Transnational") and that until June 1995 the Fourth Defendant was alternate director of both First Trade and Transnational, no admissions are made as to paragraph 36 of the Statement of Claim.
- 36. It is admitted that at all material times the share capital of First Trade was less than US\$6,000,000.00. Save as aforesaid, no admissions are made as to paragraph 37 of the Statement of Claim.
- 37. Paragraph 38 of the Statement of Claim is not admitted.
- 38. It is admitted that in or about December 1993, the Plaintiff entered into two covenants with First Trade whereby the Plaintiff agreed to maintain deposits with First Trade "in reciprocity" for First Trade extending credit to the First Defendant and the Second Defendant.

39. It is admitted that, in accordance with the said covenants, after December 1993 the Plaintiff maintained deposits with First Trade of approximately US\$22,000,000.00. It is further admitted that First Trade lent US\$16,000,000.00 to the First Defendant and US\$6,000,000.00 to the Second Defendant.
40. Save as aforesaid, paragraphs 39 and 40 of the Statement of Claim are denied. It is expressly denied that the said deposits were at any time held by First Trade and/or deposited by the Plaintiff as security of any nature for the loans to the First Defendant and Second Defendant.
41. Paragraph 41 of the Statement of Claim is not admitted.
42. The deposits with First Trade were shown in the Plaintiff's financial statements for the relevant period as deposits. It is denied that the deposits were subject to any restriction on use. It is further denied that there was any breach of standard accounting practice and/or any form of non-disclosure in respect of the treatment of the said deposits. Save as aforesaid, paragraph 42 of the Statement of Claim is denied.
43. Paragraph 43 of the Statement of Claim is admitted. First Trade set off the deposits unilaterally, unlawfully and in breach of the terms of the Plaintiff's covenant. The Plaintiff has instituted proceedings against First Trade and others in Florida for inter alia compensation for the said unlawful act.
44. It is admitted that a series of Transactions were effected on or about June 29, 1995 and that by these transactions Towerbank Limited ("Towerbank") lent US\$19.5 million to the First Defendant and US\$6 million to the Second Defendant. It is admitted that the First Defendant and Second Defendant authorised Towerbank to credit the proceeds of the loans to a deposit account in the name of the Plaintiff and the Plaintiff agreed that Towerbank could hold those deposits as security for the said loans and further authorised Towerbank to cancel the deposits and to set them off against the said loans to the First and Second Defendants. Save as aforesaid, paragraph 44 of the Statement of Claim is denied. The Bank of Jamaica was advised of these arrangements by a letter from the Plaintiff and at all material times knew of the transactions which were effected with Towerbank.

45. Paragraph 45 of the Statement of Claim is not admitted.
46. Paragraph 46 of the Statement of Claim is admitted
47. Save and except that the First and Second Defendants agreed to reimburse the Plaintiff for any interest so applied, paragraph 47 of the Statement is admitted.
48. It is admitted that by a letter dated July 9, 1996 Towerbank informed the Plaintiff of the matters set out in paragraphs (a) to (c) of Paragraph 48 of the Statement of Claim. No admissions are made as to accuracy of such information. Save as aforesaid paragraph 48 of the Statement of Claim is not admitted.
49. Paragraph 49 of the Statement of Claim is denied. Further or alternatively if, which is denied, the Plaintiff has lost the said or any sum, it is denied that such loss was caused and/or contributed to by an act or omissions of the Third Defendant.
50. Paragraph 50 of the Statement of Claim is denied. Further or alternatively if, which is denied, the Plaintiff has lost the said or any sum, it is denied that such loss was caused and/or contributed to by an act or omissions of the Third Defendant.
51. Paragraph 51 of the Statement of Claim is admitted.
52. Paragraph 52 of the Statement of Claim is not admitted
53. Paragraph 53 of the Statement of Claim is not admitted.
54. Paragraph 54 of the Statement of Claim is denied.
55. It is admitted that the Plaintiff had at some time deposited the sum of approximately US\$150,000.00 with First Trade and that at the date when First Trade went into liquidation a sum remained on deposit with First Trade. Save as aforesaid, paragraph 55 of the Statement of Claim is not admitted.
56. Save that no admissions are made as to the date of the transfer from the Plaintiff to the Sixth Defendant,

paragraphs 56 and 57 of the Statement of Claim are admitted.

57. Paragraph 58 of the Statement of Claim is not admitted.
58. Paragraph 59 of the Statement of Claim is denied.
59. Paragraph 60 of the Statement of Claim is denied.
60. Save that it is denied that the Sixth Defendant has thereby acted or omitted to act in an unlawful manner, paragraph 61 of the Statement of Claim is admitted. The Sixth Defendant has no obligation to account to the Plaintiff for the income received from the property as the property is owned by the Sixth Defendant.
61. Save that no admissions are made as to the date on which such payments were made, paragraph 62 of the Statement of Claim is admitted. The sums were paid to the Third Defendant as part of his executive salary package recommended to the Plaintiff by its auditors and approved by the Board of Directors of the Plaintiff.
62. Save that no admissions are made as to the date and/or amount of such payment and save that is denied that the payment was purportedly in reimbursement of the cost of a generator, paragraph 63 of the Statement Claim is admitted. The said payment was in respect of the reimbursement of the cost of a generator which had been owned and sold by the Third Defendant.
63. Save that no admissions are made as to the date on which and the currency in which such payment was made, paragraph 64 of the Statement Claim is admitted. The said payments were made as part of the Third Defendant's executive salary package recommended to the Plaintiff by its auditors and approved by the Board of Directors.
64. Save that no admissions are made as to the dates, currency and/or amounts of such payments, paragraph 65 of the Statement of Claim is admitted. The said payments were made as part of the Third Defendant's executive salary package recommended to the Plaintiff by its auditors and approved by the Board of Directors.

65. Save that no admissions are made as to the date and/or amount of such payment, and save that it is denied that the payment was purportedly in reimbursement of the cost of a generator, paragraph 66 of the Statement of Claim is admitted. The said payment was in respect of the reimbursement of the cost of a generator which had been owned and sold by the Third Defendant.
66. Paragraph 67 of the Statement of Claim is not admitted.
67. In the premises, it is denied that the Plaintiff is entitled to the relief claimed or any relief.

Dated the 28th day of May, 1997.

(Sgd.) Priya A. Levers
Attorney-at-Law"

Defence of the 4th Defendant

- "1. In answer to paragraph 1 of the Statement of Claim, the 4th Defendant states -
 - (a) The Plaintiff was incorporated in 1986, and licenced under The Banking Act, as it then was, and carried on the business of bankers through various branch offices in the island of Jamaica.
 - (b) On July 10, 1996, the Minister of Finance purported to assume temporary management of the Plaintiff pursuant to section 25 of the Banking Act 1992.
2. Paragraph 2 of the Statement of Claim is admitted.
3. It is admitted that the 2nd Defendant is incorporated under the Companies Act, but it is denied that the 3rd Defendant owns 99.9% of the shares in the 2nd Defendant.
4. Paragraphs 4 of the Statement of Claim is admitted, save that the 4th Defendant makes no admission of the 3rd Defendant's relationship with the 6th Defendant.
5. The 4th Defendant makes no admission to paragraph 5 of the Statement of Claim.

6. The 4th Defendant makes no admission to paragraph 6 of the Statement of Claim.
7. Paragraph 7 of the Statement of Claim is admitted.
8. Paragraphs 8, 9, 10 of the Statement of Claim are admitted.
9. It is admitted that the 1st Defendant owes a debt to the Plaintiff, but no admission is made as to the amount as at the 15th September, 1996, or any other date.
10. No admission is made as to paragraph 12 of the Statement of Claim.
11. No admission is made as to an Instrument in writing as pleaded in paragraph 13 or to demand as pleaded.
12. It is admitted that the 2nd Defendant owes a debt to the Plaintiff, but no admission is made as to the amount at the 15th September, 1996, or any other date.
13. No admission is made as to paragraph 15 of the Statement of Claim.
14. No admission is made as to paragraph 16 of the Statement of Claim.
15. No admission is made as to paragraphs 17 to 22 of the Statement of Claim.
16. It is admitted that the 7th Defendant owes a debt to the Plaintiff, but no admission is made as to the amount as at the 15th September, 1996, or any other date.
17. No admission is made as to paragraph 24 of the Statement of Claim.
18. It is admitted that the 8th Defendant owes a debt to the Plaintiff but no admission is made as to the amount as at the 15th September, 1996, or any other date.
19. No admission is made as to paragraph 26 of the Statement of Claim.

20. No admission is made as to an Instrument in Writing as pleaded or to a demand as pleaded in paragraph 27.
21. Paragraph 28 of the Statement of Claim is admitted.
22. Paragraph 29 and the Particulars contained therein are denied.
23. Paragraph 30 and the Particulars contained therein are denied.
24. Paragraph 31 of the Statement of Claim is admitted.
25. Paragraph 32 of the Statement of Claim is denied.
26. Paragraph 33 of the Statement of Claim is denied
27. Paragraph 34 of the Statement of Claim is admitted.
28. Paragraph 35 of the Statement of Claim is denied.
29. No admissions are made as to paragraph 36 of the Statement of Claim save that is admitted that the 4th Defendant was an alternate director to the 3rd Defendant.
30. No admission is made to paragraph 37 of the Statement of Claim.
31. No admission is made as to paragraph 38 of the Statement of Claim.
32. Paragraph 39 of the Statement of Claim is admitted.
33. Save that it is admitted that deposits were made as pleaded and loans were made as pleaded, it is denied that the deposits were held as security for the loans.
34. Paragraph 41 of the Statement of Claim is not admitted.
35. It is denied that there was any breach of accounting practice as alleged in paragraph 42 of the Statement of Claim, it is admitted however that the Plaintiff's financial statements did show the deposits as part of its liquid funds because it was not held as security.

36. Paragraph 43 of the Statement of Claim is admitted.
37. It is admitted that there were a series of transactions as set out in paragraph 44, it is denied however, that there was any attempt at concealment and the 4th Defendant says that the Bank of Jamaica was notified of these transactions.
38. Paragraph 45 of the Statement of Claim is not admitted.
39. Paragraph 46 of the Statement of Claim is admitted.
40. Paragraph 47 of the Statement of claim is admitted.
41. No admission is made as to paragraph 48 of the Statement of Claim.
42. Paragraph 49 of the Statement of Claim is denied. Further if, which is denied, the Plaintiff has lost the said or any sum, it is denied that such loss was caused and/or contributed to by any act or omission of the 4th Defendant.
43. Paragraph 50 of the Statement of Claim is denied. It is further denied that First Trade has any rights against the First and/or Second Defendants.
44. Paragraph 51 of the Statement of Claim is admitted.
45. Paragraph 52 of the Statement of Claim is not admitted.
46. Paragraph 53 of the Statement of Claim is not admitted.
47. Paragraph 54 of the Statement of Claim is not admitted.
48. Paragraph 55 of the Statement of Claim is not admitted.
49. No admission is made as regards paragraphs 56 to 66 of the Statement of Claim.
50. It is specifically denied that the Plaintiff paid to Corbed Inc. the sums pleaded at paragraph 67 (a) (i) (ii) (iii) of the Statement of Claim.
51. It is admitted that the Plaintiff paid to the Fourth Defendant's wife Claudette Williams the sums pleaded at paragraph 67(b) (i) and (v).

52. It is specifically denied that the Plaintiff paid to the Fourth Defendant's wife Claudette Williams the sums pleaded at paragraph 67(b) (ii) (iii) (iv) and (vi).
53. Save as is expressly admitted the 4th Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out herein and traversed seriatim.
54. As a consequence of the foregoing the 4th Defendant denies that the Plaintiff is entitled to any of the reliefs sought against the 4th Defendant.

DATED THE 25TH DAY OF NOVEMBER, 1996.

PLAYFAIR JUNIOR PEARSON & CO.
Per:
Attorney-at-Law for the 4th Defendant"

Defence and Counterclaim of the 5th Defendant

- "1. Save that no admission is made as to the legality of the Minister's action Paragraph 1 of the Statement of Claim is admitted.
2. No admission is made in respect of paragraphs 2,3,4,5,6, and 7 of the Statement of Claim.
3. Paragraphs 8 and 9 of the Statement of Claim are admitted.
4. No admission is made in respect of paragraphs 10, 11, 12, 13, 14, 15 and 16 of the Statement of Claim.
5. The 5th Defendant denies being indebted to the Plaintiff in the sum alleged in paragraph 17 of the Statement of Claim or any other sum, and says that whatever sum may have been owing to the Plaintiff as at the 31st August, 1996; he instructed that that sum be set off as against the Plaintiffs indebtedness to him by letter of the 2nd September, 1996.
6. Paragraph 18 of the Statement of Claim is denied.
7. No admission is made in respect of paragraphs 19,20, 21,22, 23, 24,25,26, 27 of the Statement of Claim.

8. Paragraph 28 of the Statement of Claim is admitted.
9. Paragraph 29 and the Particulars of Negligence contained therein are specifically denied.
10. In further answer to paragraph 29 of the Statement of Claim the 5th Defendant says he joined the Plaintiff on the 26th April, 1993, AND his appointment as President was to meet one of the undertakings given by the Plaintiff to the Minister of Finance, as he then was, in March, 1993.
11. Still, in further answer to paragraph 29 of the Statement of Claim the 5th Defendant says that the Particulars of Negligence alleged either pre-dated his joining the Plaintiff or related to matters outside the scope of his actual authority, and further upon his becoming aware of the transaction particularized at letter (d), the Bank of Jamaica was notified.
12. As regards the 5th Defendant, Paragraph 30 of the Statement of Claim is specifically denied, and so too are the Particulars set out thereunder.
13. Paragraph 31 of the Statement of Claim is admitted and the 5th Defendant says that he has always acted in accordance with his duty as set out in letters a to h, but not limited thereto.
14. Paragraph 32 of the Statement of Claim and the particulars contained in paragraph 29 are specifically denied.
15. Paragraph 33 of the Statement of Claim is specifically denied.
16. Paragraph 34 of the Statement of Claim is admitted.
17. Paragraph 35 of the Statement of Claim is specifically denied.
18. No admission is made in respect of paragraphs 36,37,38,39,40 and 41.
19. In further answer to paragraphs 36 to 41, the 5th Defendant states that he was not privy to the transaction involving First

Trade in the first instance and became aware only "after the fact" at which point Bank of Jamaica was notified and further advised of the Towerbank transaction.

20. It is admitted that the Plaintiff's financial statements showed the deposits with First Trade as deposits held, and the 5th Defendant says that he was unaware of any restrictions as to use and so soon as he was aware of restrictions on the deposits the Auditors were advised for their inclusion in the subsequent Balance Sheet.
21. No admission is made as regards paragraph 43 of the Statement of Claim.
22. It is denied that any concealment or attempt at concealment was effected a series of transactions as alleged in paragraph 44 of the Statement of Claim, in fact, the series of transactions referred to in paragraph 44 were brought to the attention of the Governor of the Bank of Jamaica, personnel of the Bank of Jamaica, the Minister of Finance, and officials of the Ministry of Finance.
23. It is denied that the accounting records of the Plaintiff did not reflect the transactions referred to in paragraph 44 of the Statement of Claim, and it is further denied that the Plaintiffs accounting records gave any misleading impression.
24. No admission is made as regards paragraph 46 of the Statement of Claim.
25. No admission is made as regards paragraph 47, 48 and 49 of the Statement of Claim and the 5th Defendant says further that he was unaware of the transaction as alleged in paragraph 47 of the Statement of Claim.
26. No admission is made as regards paragraph 50 of the Statement of Claim.
27. No admission is made as regards paragraphs 51, 52 and 53 of the Statement of Claim and the 5th Defendant says further that he was unaware of the transactions as alleged in paragraphs 51-53 of the Statement of Claim.

28. No admission is made as regards paragraph 54 of the Statement of Claim.
29. No admission is made as regards paragraph 55 of the Statement of Claim and the 5th Defendant says further that he was unaware of the transaction as alleged in paragraph 55 of the Statement of Claim.
30. No admission is made as regards 56, 57, 58, 59, 60 and 61 of the Statement of Claim and the 5th Defendant says further that he was not in the employ of the Plaintiff at the relevant time.
31. No admission is made as regards paragraphs 62, 63, 64, 65 and 66 of the Statement of Claim and the 5th Defendant says further that he was not aware of any of the payments alleged in those paragraphs.
32. The 5th Defendant denies knowledge of any of the payments alleged in paragraph 67 of the Statement of Claim, and no admission is made as regards to paragraph 67 of the Statement of Claim.
33. As a consequence of the foregoing, the 5th Defendant denies that the Plaintiff is entitled to any of the reliefs sought against the 5th Defendant.
34. Save as is expressly admitted the 5th Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out herein and traversed serialim.

COUNTERCLAIM

35. The 5th Defendant repeat paragraphs 1 to 34 of his Defence.
36. The 5th Defendant claims against the Plaintiff, damages for wrongful dismissal and in the alternative damages for breach of contract.
 - 1) Outstanding Re-imbursable Expenses \$ 92,630.35
 - 11) Payment Due Upon Termination of Contract \$6,921,151.70
37. The 5th Defendant further claims damages.

38. THE PLAINTIFF ALSO CLAIMS:-

- a) Interest pursuant to the Law Reform (Miscellaneous Provisions) Act.
- b) Costs
- c) Such further and other relief as may be just.

DATED THE 20th DAY OF November, 1996."

Defence of the 6th Defendant

- "1. In reply to paragraph 19 of the Statement of Claim, the Sixth Defendant admits that it owed money to the Plaintiff on current account. The amount of the debt is not known to the Sixth Defendant before inspection of document herein.
- 2. In reply to paragraph 20 of the Statement of Claim the Sixth Defendant denies that interest accrues on the said debt at the rate of 65% per annum.
- 3. It was an express term of the contract of loan that, as evidenced by an advice of loan dated 14th of February, 1996, that the rate of interest payable thereon was 3 1/2%.
- 4. In reply to paragraph 58 and 59 of the Statement of Claim, the Sixth Defendant denies that the transfer referred to was a sham or unenforceable. The Sixth Defendant is the registered and lawful owner of the said premises.
- 5. In the premises the Sixth Defendant denies that the Plaintiff is entitled to relief claimed in paragraphs 8(a)-(e), 11 or 12 of the Statement of Claim against the Sixth Defendant.
- 6. No admissions are made as to any other paragraph of the Statement of Claim.

DATED THE 5th DAY OF FEBRUARY 1997.

Defence of the 9th Defendant

- 1. Without prejudice to the express reservation hereby made of the Ninth Defendant's right to strike out the Writ and Amended Statement of Claim on the grounds that this action was brought

without proper or lawful authority and is an abuse of the process of the Court, the Ninth Defendant pleads to the allegations made against her as set out in the following paragraphs.

2. As to paragraph four of the Amended Statement of Claim the Ninth Defendant admits that she is the mother of the Third Defendant.

3. As to paragraph 21 of the Statement of Claim the Ninth Defendant denies that she guaranteed any sums due to the Plaintiff from the Second Defendant. She denies that there was any "understanding" whether expressed to any party or implied, that the Second Defendant's obligations were guaranteed by her. She admits that she signed a document of guarantee for the express purpose of guaranteeing a loan by the Plaintiff to the Sixth Defendant. She denies that she authorised the Plaintiff to complete the said document by inserting the Second Defendant's name and contends that any such insertion would be unlawful.

4. As to paragraph 22b of the Amended Statement of Claim the Ninth Defendant denies that she created any equitable mortgage on any of the properties there specified. The said deeds were deposited with the Plaintiff for safe keeping.

5. The Ninth Defendant make no admissions as to any other paragraphs of the Amended Statement and contends that they contain no allegations relevant or referable to her.

DATED THE 5th DAY OF February, 1997."

CLAIM SUIT CL 1997/C050

The Endorsement on the amended Writ of Summons reads as follows.

The Plaintiff's claim is:

1. Against the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants for monies lent by Century National Building Society together with interest thereon;
2. Against the 2nd, 3rd and 4th Defendants for damages for breach of their fiduciary duties to Century National Building Society.

3. Against the 2nd and 3rd Defendant for damages for breach of their duties of care and skill.
4. For a declaration that the agreement between Century National Building Society and the 1st Defendant dated January 31, 1996 is void and of no effect.
5. For interest pursuant to section 3 of the Law Reform (Miscellaneous Provisions) Act.
6. For further or other relief.
7. For costs.

The Statement of Claim as amended is set out hereunder:

"1A. The Plaintiff is a company in which, pursuant to an Order of this Honourable Court made on the 21st day of October, 1997 in Suit No. M-123 of 1997, the assets of Century National Building Society and all claims and rights to recover debt, damages or other compensation from persons liable to Century National Building Society are vested.

1B. Century National Building Society (hereinafter referred to as "CNBS") is and was at all material times a building society incorporated under the Building Societies Act with its principal office located at 14-20 Port Royal Street, Kingston, and at all material times carried on business as a building society through its principal office and various branch offices in the island of Jamaica.

2. On July 10, 1996, the Minister of Finance assumed the temporary management of CNBS pursuant to section 34F of the Bank of Jamaica Act and regulation 64 of The Bank of Jamaica (Building Societies) Regulations, 1995.

3. The 1st Defendant is a company incorporated in the island of Jamaica and was at all material times the majority shareholder of CNBS.

4. At all material times the 2nd Defendant:

- a. was the chairman and Chief Executive Officer of CNBS and received a salary for his services;
 - b. was a director of and with his wife and children owned all the shares in the 5th Defendant, a company incorporated in the island of Jamaica.
 - c. together with his mother and the 5th Defendant, owned a majority of the shares in the 1st Defendant.
5. The 3rd Defendant was at all material times a director, the President and an employee of CNBS and received a salary for his services.
 6. At all material times the 4th Defendant was a director of CNBS and of the 1st Defendant and was a shareholder in the 1st Defendant.
 7. The 6th Defendant is a company incorporated in the island of Jamaica. All the shares in the 6th Defendant are owned by the 4th Defendant and his wife, Claudette Williams. The directors of the 6th Defendant are the 4th Defendant and his said wife.
 8. The 2nd Defendant is indebted to the Plaintiff in respect of his account numbered 4601700505 for the amount of \$143,111.45 together with interest thereon for monies lent. Said debt is comprised of the principal sum of \$108,337.51 together with accrued interest of \$34,773.94 as at February 13, 1997.
 9. Interest continues to accrue on the said principal sum of \$108,337.51 at the rate of 55% per annum (or \$163.25 per day) from February 14, 1997 until judgment or sooner payment.
 10. The 3rd Defendant is indebted to the Plaintiff in respect of his account numbered 4601700604 for the amount of \$1,254,433.77 together with interest thereon for monies lent. Said debt is comprised of the principal sum of \$922,427.56 together with accrued interest of \$332,006.21 as at February 13, 1997.
 11. Interest continues to accrue on the said principal sum of \$922,427.56 at the rate of 55% (or \$1,389.96 per day) per annum from February 14, 1997 until judgment or sooner payment.
 12. The 5th Defendant is indebted to the Plaintiff in the amount of \$13,665,178.93 together with interest thereon for monies lent:

PARTICULARS

- a. in respect of its account numbered 4601702733 for the amount of \$6,840,056.38 comprised of the principal sum of \$5,390,510.19 together with accrued interest of \$1,499,546.19 as at February 13, 1997.
 - b. interest on the said principal sum of \$5,390,510.19 at the rate of 55% per annum (or \$8,122.69 per day) from February 14, 1997, until judgment or sooner payment.
 - c. in respect of its account numbered 4601702758 for the amount of \$6,815,132.55 comprised of the principal sum of \$5,371,983.16 together with accrued interest of \$1,443,139.39 as at February 13, 1997.
 - d. interest on the said principal sum of \$5,371,983.16 at the rate of 55% per annum (or \$8,094.77 per day) from February 14, 1997, until judgment or sooner payment.
13. Pursuant to an instrument of guarantee dated June 28, 1994 for an unlimited sum and issued by the 2nd Defendant in favour of CNBS to secure the indebtedness of the 5th Defendant to CNBS, the 2nd Defendant is indebted to the Plaintiff for the said amount of \$13,655,178.93 together with interest thereon owed by the 5th Defendant to the Plaintiff.
14. The 6th Defendant is indebted to the Plaintiff in the amount of \$23,918,986.36 together with interest thereon for monies lent:

PARTICULARS

- a. in respect of its account numbered 4601702782 for the amount of \$8,879,877.04 comprised of the principal sum of \$7,271,589.45 together with accrued interest of \$1,608,287.59 as at February 13, 1997.
- b. interest on the said principal sum of \$7,271,589.45 at the rate of 55% per annum (or \$10,957.19 per day) from February 14, 1997 until judgment or sooner payment.
- c. in respect of its account numbered 4601702766 for the amount of \$4,664,666.11 comprised of the principal sum of

\$3,837,507.99 together with accrued interest of \$827,158.12 as at February 13, 1997.

d. interest on the said principal sum of \$3,837,507.99 at the rate of 55% per annum (or \$5,782.55 per day) from February 14, 1997 until judgment or sooner payment.

e. in respect of its account numbered 4601703806 for the amount of \$10,374,443.21 comprised of the principal sum of \$8,612,071.71 together with accrued interest of \$1,762,371.50 as at January 31, 1997.

f. interest on the said principal sum of \$8,612,071.71 at the rate of 55% per annum (or \$12,997.01 per day) from February 14, 1997 until judgment or sooner payment.

15. Pursuant to an instrument of guarantee dated February 18, 1986 for an unlimited sum and issued by the 4th Defendant in favour of CNBS to secure the indebtedness of the 6th Defendant to CNBS, the 4th Defendant is indebted to the Plaintiff for the said amount of \$23,918,986.36 together with interest thereon owed by the 6th Defendant to the Plaintiff.

16. The 2nd, 3rd and 4th Defendants and each of them had a fiduciary duty to CNBS including but not limited to a duty to:

- a. Act in its best interests;
- b. Act in good faith;
- c. Enter into contracts and/or agreements which were in its best interests;
- d. Exercise their powers as directors for proper purposes only;
- e. Not misuse CNBS's assets;
- f. Not place themselves in a position where there would or, alternatively, could be a conflict of interest between their duty to CNBS and their personal interests;
- g. Ensure that CNBS carried on its business in accordance with its rules, the Building Societies Act, the Bank of Jamaica Act and other legislation and regulations.

17. In breach of their said fiduciary duties the 2nd, 3rd and 4th Defendants and each of them caused and/or allowed CNBS to enter into The Jamaica Grande Sale Agreement (particulars of

which are described in paragraphs 24-31 below) and to grant unsecured or inadequately secured loans, including the loans referred to in paragraphs 8-14 hereof.

18. As a result of the 2nd, 3rd and 4th Defendants' aforesaid breaches of their fiduciary duties CNBS has incurred expenses and suffered loss and damage including the expenses, loss and damage particularized below:

PARTICULARS

The sums referred to in paragraphs 8-15 and 30 hereof.

19. Further and in the alternative the 2nd and 3rd Defendants owed a duty of care and skill to CNBS.

20. In breach of their said duty of care and skill the 2nd and 3rd Defendants and each of them negligently caused and/or allowed CNBS to enter into the transactions described in paragraph 17 hereof.

21. As a result of the 2nd and 3rd Defendants' said negligence CNBS has incurred the expenses and suffered loss and damage including the loss and damage particularized in paragraph 18 hereof.

22. Further and in the alternative, it was an express or alternatively an implied term of the contracts of employment of the 2nd and 3rd Defendants that they would act in accordance with the duties set out at paragraph 16 hereof.

23. In breach of the aforesaid terms the 2nd and 3rd Defendants caused and/or allowed CNBS to enter into the transactions described in paragraph 17 hereof as a result of which the Plaintiff has suffered the loss and damage and incurred the expenses particularized in paragraph 18 hereof.

The Jamaica Grande Sale Agreement

24. By an agreement in writing dated January 31, 1996 between CNBS and the 1st Defendant (hereinafter called "the said agreement"), the 1st Defendant contracted to sell to CNBS "the beneficial ownership in 700,000 ordinary shares of which Holdings [the 1st Defendant] is the beneficial owner in the share capital of Jamaica

Grande Limited" at a purchase price of One Billion One Hundred and Twenty-five Million Nine Hundred and Twenty-two Thousand Dollars (\$1,125,922,000).

25. The said purchase price was partially payable by a reduction by \$484,920,000 of the sum owing by the 1st Defendant CNBS with the remainder to be paid by the issue to the 1st Defendant of proprietary shares in the share capital of the Plaintiff amounting to \$642,000,000. The shares were never, in fact, issued.

26. Pursuant to the said agreement the 1st Defendant's indebtedness to CNBS was purportedly reduced by \$484,920,000.

27. The 1st Defendant was not on the 31st day of January, 1996, or at any time, the legal or beneficial owner of the said shares or any shares in Jamaica Grande Limited.

28. In suit number E 414 of 1996, an action brought by Century National Bank Limited against the 1st Defendant, Jamaica Grande Limited, and others to determine which entity was and is the rightful owner of shares in Jamaica Grande Limited including the aforesaid shares, the Honourable Mr. Justice Wolfe, C.J., in his judgment delivered on the 13th day of February, 1997, found and held that the 1st Defendant was not at the material time the legal or beneficial owner of the said shares.

29. At all material times the 2nd, 3rd and 4th Defendants knew or ought to have known that the 1st Defendant could not, by virtue of the said agreement or otherwise, transfer the beneficial ownership of the aforesaid shares in Jamaica Grande Limited to CNBS and CNBS contends that the transaction was void and of no effect.

30. As a result of the said agreement CNBS has lost the sum of \$761,125,117.60 together with interest thereon.

PARTICULARS

Principal sum	\$484,920,000.00
Interest @ 55% per annum from	
February 1, 1996 - February 13, 1997	<u>\$276,205,117.60</u>
	<u>\$761,125,117.60</u>

31. Interest continues to accrue at the rate of 55% per annum or \$730,701.36 per day from February 14, 1997.

AND THE PLAINTIFF CLAIMS:

1. Against the 1st Defendant the sum of \$761,125,117.60 together with interest thereon from February 14, 1997 at the rate of 55% per annum or \$730,701.36 per day.
2. Against the 2nd Defendant the sum of \$143,111.45 together with interest thereon from February 14, 1997 in the amount of \$163.25 per day.
3. Against the 3rd Defendant the sum of \$1,254,433.77 together with interest thereon from February 14, 1997 in the amount of \$1,389.96 per day.
4. Against the 2nd and 5th Defendants, jointly and severally, the sum of \$13,655,178.93 together with interest thereon from February 14, 1997 in the amount of \$16,217.46 per day.
5. Against the 4th and 6th Defendants, jointly and severally, the sum of \$23,918,986.36 together with interest thereon from February 14, 1997 in the amount of \$29,716.75 per day.
6. Against the 2nd, 3rd and 4th Defendants damages for breach of their fiduciary duties.
7. Alternatively to 6 above, against the 2nd and 3rd Defendants for damages for breach of their duties of care and skill.
8. A declaration that the agreement between CNBS and the 1st Defendant dated January 31, 1996 (The Jamaica Grande Sale Agreement) is void and of no effect.
9. Interest pursuant to section 3 of the Law Reform (Miscellaneous Provisions) Act.
10. Further or other relief.
11. Costs.

Dated the 14th day of February, 1997."

All Defendants entered appearances. The Defence of the 1st, 2nd and 5th Defendants is set out hereunder.

"1. Without prejudice to an express reservation hereby made of the First, Second and Fifth defendants' rights:-

- (i) to contend that the Statement of Claim should be struck out as constituting an abuse of process of the court; and/or
- (ii) to contend that the Statement of Claim should be struck out for want of a reasonable cause of action.

The First, Second and Fifth Defendants plead to the allegations made against them in the Statement of Claim herein as set out in the following paragraphs.

- 2. Paragraph 1 of the Statement of Claim is admitted.
- 3. Paragraph 2 of the Statement of Claim is not admitted.
- 4. Paragraphs 3, 4, 5 and 6 of the Statement of Claim are admitted.
- 5. Paragraph 7 of the Statement of Claim is not admitted
- 6. The principal debt referred to in paragraphs 8 and 9 of the Statement of claim is admitted. No admissions are made as to the calculation of interest.
- 7. Paragraphs 10 and 11 of the Statement of Claim are not admitted.
- 8. The principal debts referred to in paragraphs 12 and 13 of the Statement of Claim are admitted. The guarantee referred to in paragraph 13 thereof is admitted. No admissions are made as to the calculation of interest.
- 9. Paragraphs 14 and 15 of the Statement of Claim are not admitted.

10. Paragraph 16 of the Statement of Claim is admitted.
11. Each and every allegation made in paragraph 17 of the Statement of Claim is denied.
12. Paragraph 18 of the Statement of Claim is denied.
13. Paragraph 19 of the Statement of Claim is admitted save and except that the duty was to use reasonable care and skill.
14. Paragraphs 20 and 21 of the Statement of Claim is not admitted.
15. Paragraph 22 of the Statement of Claim is not admitted.
16. Paragraph 23 of the Statement of Claim is denied.
17. Paragraph 24 of the Statement of Claim is admitted.
18. Paragraph 25 of the Statement of Claim is admitted.
19. Paragraph 26 of the Statement of Claim is admitted.
20. The Judgment referred to in paragraph 28 of the Statement of Claim is admitted. The said Judgment is under Appeal. Pending the outcome of the Appeal paragraph 27 of the Statement of Claim is not admitted.
21. Paragraph 29 of the Statement of Claim is denied. The Second Defendant was advised by the First Defendant's Attorney-at-Law and its auditors at all material times that the First Defendant held a valid beneficial interest in the said shares.
22. Paragraphs 30 and 31 of the Statement of Claim are denied.

Dated the 20th day of June, 1997"

It is to be noted that paragraphs 1, 3, 4, 5, 6, 16, 24, 25, 26 and 28 of the Statement of Claim have been admitted.

Paragraphs 8, 9, 12, 13, 19 have been partly admitted.

By virtue of a Judgment of this Court delivered on the 13th day of February, 1997, in which it was held that the first defendant was not the legal or beneficial owner of Jamaica Grande Limited, paragraph 27 of the Statement of Claim is no longer in issue between the parties.

Under the sub-head of the Statement of Claim titled "And the Plaintiff claims" Judgment was entered for the Plaintiff in respect of paragraphs 1, 2, 4, 8 and in respect of paragraph 5, Judgment was entered for the Plaintiff against the sixth defendant. The issue remains to be resolved in respect of the fourth defendant.

Paragraphs 3, 6, and 7 remain issues to be resolved between the parties.

CLAIMS (Summary)

In his closing address Mr. Hyllton, Q.C., summarised the claims of the Plaintiff, as:

"1.1 Debts

The Plaintiff claims against CNB Holdings Limited ("Holdings"), Century National Development Limited ("Development"), Regardless Limited ("Regardless"), Fordix Limited ("Fordix"), Spring Park Farms Ltd. ("Spring Park") and Debroc Limited ("Debroc") for various sums which these Defendants borrowed from the Bank and the Building Society. None of these Defendants deny owing the debts claimed, and summary judgments have already been entered against them. These judgments have only been partially satisfied and so the claims are still relevant in this suit. There is also a similar claim against Balmain Brown ("Brown") which is not being pursued because the Plaintiff has allowed a set off.

1.2 Guarantees

The Plaintiff also claims against Donovan Crawford ("Crawford") and Alma Crawford as guarantors of Development's indebtedness. They both admit having executed the relevant instruments of Guarantee in blank, but say that they were guaranteeing another debtor. The plaintiff also claims against Valton Caple Williams ("Williams") as guarantor of Debroc's debt. He admits liability. (p.7 Supplemental C050 JB).

1.3 First Trade/Towerbank

The plaintiff claims that Holdings and Development are liable to it for the sum of US\$25.5 Million and interest in relation to losses suffered by the Bank as a result of the First Trade/Towerbank transaction. These Defendants deny that the Bank suffered the losses claimed, and say, in the alternative, that if the losses were suffered, they are not liable to compensate the Plaintiff.

1.4 Negligence and Breach of Duty

The Plaintiff claims against Crawford, Williams and Brown asserting that they are liable to make good the debts and the losses referred to above and other losses. The Plaintiff says that these losses resulted from the negligence of these Defendants; alternatively, from a breach of their contractual duties as managers of the Bank and the Building Society; alternatively, from a breach of their fiduciary duties as Directors of the Bank and the Building Society. Crawford, Williams and Brown deny that they are liable.

1.5 Equitable Mortgages

The Plaintiff contends that it is an equitable mortgagee by deposit of title deeds of certain properties owned by Crawford and Alma Crawford.

1.6 Paddington Terrace

The Plaintiff claims that the Bank is the true owner of property known as 1 Paddington Terrace and seeks an

order setting aside the Bank's transfer to Regardless. Regardless contends that the transfer to it was valid and enforceable."

ISSUES

The issues which must be resolved arising out of these claims are:

A. The Guarantee

Is the instrument of Guarantee enforceable against Donovan Crawford and Alma Crawford in respect of the debts of Development?

B. First Trade Ltd.

(i) Has the Plaintiff suffered a loss as a result of the First Trade transaction, and if so, how much?

(ii) Is the Plaintiff entitled to recover any such loss from Crawford, Williams and Brown on the basis of their negligence and/or breach of duty?

(iii) Is the Plaintiff entitled to recover any such loss from Holdings and/or Development, whether by subrogation or otherwise?

C. Negligence and/or Breach of Duty

In relation to the other losses suffered by the Bank and the Building Society, were Crawford, Williams and Brown or any of them, in breach of their common law duty of care, or their contractual

duties, or their fiduciary duties, and did those breaches cause the losses suffered by the Bank and/or the Building Society?

D. Equitable Mortgages

Did the deposit of title deeds, in the circumstances of this case, create equitable mortgages?

E. Paddington Terrace

Should the transfer of this Property to Regardless be set aside?

F. The Counterclaim

Was the Bank entitled to dismiss Brown summarily and without notice?

G. Miscellaneous

(i) Is interest payable under the Law Reform (Miscellaneous Provisions) Act, and if so, on what sums and at what rate?

(ii) Should there be a post-judgment "Mareva" Injunction?

Let me dispose of what I would refer to as a preliminary matter. Each defendant has raised in one form or another the legality of the action of the Minister of Finance in assuming temporary management of the Bank and the Building Society. They contend that such action was invalid and of no effect. This issue was raised in other related matters before the Supreme Court and was resolved in favour of the Minister. The Court of Appeal of Jamaica affirmed the

decision of the Supreme Court and the Judicial Committee of the Privy Council in *Century National Merchant Bank Ltd. and Others v. Omar Davis and Others* (Privy Council Appeal No. 52 of 1997) on March 16, 1998 dismissed the appeal brought by Donovan Crawford and Others against the decisions of the Supreme Court and Court of Appeal. In dismissing the appeal their Lordships expressly held that the Minister of Finance had acted lawfully in assuming temporary management of the Century Finance entities.

In light of this decision this aspect of the defendants' defence inevitably fails.

Mr. Hylton, Q.C., submitted that notwithstanding the fact that summary judgment has already been obtained against CNB Holdings, Century National Development Ltd., Regardless Ltd., Fordix Ltd. and Spring Farms in respect of the debts owed by them to the Bank and Building Society the plaintiff was entitled to recover these sums from Donovan Crawford, Valton Caple Williams and Balmain Brown on the basis that the Bank and the Building Society were exposed to and suffered these losses because of the negligence and/or breach of duty on the part of the latter-named defendants who were directors and employees of the Bank and Building Society.

I take the view that the submission is sound in law if it is proved that the defendants were negligent and or guilty of breach of their fiduciary duty as a consequence of which the plaintiff suffered the losses complained of.

I turn now to deal with the issues which must be resolved.

ISSUE A

THE GUARANTEE

In or about the year 1992 Donovan Crawford and his mother Alma Crawford, the third and ninth defendants in Suit C.L. 1996/C330 executed an instrument of guarantee and an instrument of mortgage under the Registration of Titles Act. The executed documents contained no other relevant information. Both defendants also signed a letter authorising the Bank to complete the documents mentioned above.

The plaintiff contends that the documents were executed by the defendants to guarantee the indebtedness of Century National Development Ltd. to Century National Bank Ltd.

Crawford in his defence denied that the documents were executed to guarantee the debts of Development Ltd. Alma Crawford admits that she signed the documents but states that the documents were executed to guarantee the debts of Regardless Ltd.

For the following reasons, the Plaintiff moves the Court to find that the guarantee was in respect of debts owed by Development Ltd.

- (i) Crawford at the relevant time was the Chairman of and had direct or indirect shareholding in Holdings Ltd., Development Ltd. and Regardless Ltd.
- (ii) Alma Crawford was a shareholder of both Holdings Ltd. and indirectly Development Ltd. but not of Regardless Ltd.

(iii) In respect of Regardless Ltd. she was a Director from 1984 - 1996.

Mr. Bailey for the defendants submitted that the factual situation supports the contention of Donovan and Alma Crawford that the guarantee was given in respect of the indebtedness of Regardless Ltd. He points to the following pieces of uncontroverted evidence.

- (i) Donovan and Alma Crawford are joint owners of shares in C.N.B. Holdings Ltd.
- (ii) Alma Crawford is not a shareholder in Regardless Ltd. but only a Director.
- (iii) Alma Crawford is neither a director nor a shareholder in Century National Development Ltd.

Having made the above observation Mr. Bailey posits this question:

“As a matter of common sense which is more likely?
Is it more likely that Alma Crawford would purport to give a guarantee on behalf of a Company of which she is neither a Director nor a Shareholder OR is it more likely that she would do so for a company of which she is a Director?”

A valid question indeed, but three things have escaped Mr. Bailey, as he posited the question:

- (i) Regardless Ltd. of which Alma Crawford is a Director, is also a shareholder in Century National Bank Holdings Ltd.
- (ii) Donovan Crawford is the majority shareholder in Century National Development Ltd. He owns 9999 shares whilst Neville Roche owns one share. The property which is being offered as

guarantee for the debt is owned by Donovan Crawford and Alma Crawford.

- (iii) Century National Development Ltd. had guaranteed the debt of C.N.B. Holdings Ltd. of which Regardless Ltd. is a shareholder.

It is clear that Alma Crawford is a mere pawn in Donovan Crawford's game. It would not be unreasonable to conclude that the real owner of the asset is the son and not the mother. The mother acts at the son's behest.

Mr. Hylton, Q.C., submitted that the Court ought to conclude from the enormity of the debt owed by Century National Development Ltd., to wit, over \$500 million, as opposed to a mere \$6 million owed by Regardless Ltd. that the guarantee was in respect of Century National Development Ltd.

Alma Crawford is also a shareholder of C.N.B. Holdings Ltd. of which Regardless Ltd. is a shareholder.

Donovan Crawford is also the principal shareholder in C.N.B. Holdings Ltd. It therefore means that both mother and son had a beneficial interest in Century National Development Ltd. Alma Crawford had no beneficial interest in Regardless Ltd.

The difficulty which arises in this case is the number of entities in which the defendants had interests and which were indebted to the plaintiff.

Is it permissible for the Court to look at the factual situation and determine who was intended to be the primary debtor? I am convinced that it is

always permissible for the Court in any matter to ascertain the intention of the parties from evidence adduced.

Now what is the factual situation from which the intention of the parties may be gleaned?

1. The debts of all the other entities in which the parties had an interest and who were indebted to the plaintiff were guaranteed, namely, Fordix Ltd., Spring Park Farms and Holdings Ltd.
2. Development Ltd. guaranteed the debts of the above entities.
3. The huge debt owed by Development Ltd. was not guaranteed. This debt stood at J\$235,887,984.90 with interest at the rate of 65% from September 16, 1996 and US\$16,000,000 and interest thereon pursuant to its guarantee of the first defendant. Also the sum of J\$251,608,398.43 being the debit balance outstanding as at September 16, 1996 in respect of the second defendant's current account with C.N.B. with interest at the rate of 65% per annum from September 16, 1996.
4. Both Donovan and Alma Crawford have a beneficial interest in Development Ltd.
5. Alma Crawford had no beneficial interest in Regardless Ltd.
6. Regardless Ltd. indebtedness to C.N.B. Ltd. stood at J\$7,000,000.00 and has now been liquidated.

I am satisfied that the haste with which the indebtedness of Regardless was liquidated was all part of a plan to facilitate the defence that the guarantee was in respect of Regardless. The position of Donovan and Alma Crawford is, Regardless having liquidated its indebtedness, we are entitled to have our title deeds returned as the guarantee is no longer valid.

The enormity of the debt of Development Ltd., the fact that Development Ltd. had guaranteed the debt of other entities lead me to conclude on a balance of probabilities that the defendants intended to guarantee the indebtedness of Development Ltd. when they signed the blank guarantee.

More significantly, the defendants refused to adduce any evidence to controvert the allegation by the plaintiff, which in my view is supported by the factual situation.

It certainly does not make sense to argue that Development Ltd., having guaranteed the debt of all these other entities, would not be required to provide some guarantee for its own indebtedness.

Having found that the defendants intended to guarantee the debt of Development Ltd. the issue to be resolved now is whether or not the guarantee is enforceable.

Mr. Bailey contends that the guarantee is not enforceable. The gravamen of his submission is that the guarantors purport to guarantee the "present and future Debts and Liabilities of the Customer".

Present debts, he submits, must necessarily refer to debts incurred contemporaneously with the execution of the guarantee and not to debts incurred prior thereto. If, he continues, it were interpreted to include debts incurred prior to the execution of the instrument of guarantee then the doctrine of past consideration would apply. He further submits that the transaction does not fall within any of the exceptions to the rule that "Past consideration is no consideration".

Before addressing the submission let me correct a submission made by Mr. Bailey when he said that there is no evidence that Century National Development Ltd. was in existence in 1992. At paragraph 5 of the 3rd Defendant's amended Defence it is pleaded that Century National Development was incorporated on the 15th August, 1991.

The submission by Mr. Bailey that "present debts" means debts incurred contemporaneously with the execution of the instrument of guarantee is attractive for its ingenuity, but lacks merit. The word "present" must be given its ordinary dictionary meaning which is "now existing". So any debt existing at the time of the execution of the instrument of guarantee would be within the ambit of the guarantee and would not be caught by the principle of Past Consideration.

It is further submitted that the guarantee must fail for uncertainty in that it failed to name the debtor whose debts were being guaranteed, as well as the amount which was being guaranteed. It must be borne in mind that the third

defendant, Donovan Crawford, one of the guarantors, was the Chief Executive Office of Century National Bank Ltd., in whose favour the instrument of guarantee was executed.

While it is an undesirable practice for customers to sign blank documents, with authority given to the lending agency to complete, the fact is that this occurs daily in the world of banking. In this case it was a banker himself who was involved in the transaction as opposed to a man from off the street.

There is no issue as to whether or not the Defendants signed the blank document. The issue raised is whether the blank document can now be filled in by the plaintiff.

The document having been signed by the defendants they would only be able to avoid being bound if they are able to show that they were misled into signing a document essentially different from that which they intended to sign. If this is so the defendants could plead Non Est Factum.

As I understand the pleadings and the submissions of Counsel for the defendants Donovan and Alma Crawford, there is no suggestion that they are or were mistaken as to the nature and quality of the document to which they affixed their signature. Again, I repeat the issue is, can the Court properly order that the document be completed by the plaintiff?

In Riggs Asset Finance Ltd. v. Blue Circle Ltd. (t/a Pinch's Haulers and Contractor's Plant - Heard on 17th November, 1994, an unreported decision of

the English Court of Appeal (Civil Division) dealing with the plea of Non Est Factum, Millet LJ held:

“and that defence, in the case of ordinary person of normal understanding is not open to a person who knowingly signs a document in blank.”

It is clear to see that this was a fraudulent scheme. The Chief Executive Officer of C.N.B. Ltd., who had an interest in all these other entities which were indebted to C.N.B., permits the debts to be guaranteed by Development Ltd., in which he also had a beneficial interest, providing a blank guarantee to be filled in by the bank.

The defendants gave authority for the documents to be completed. There is no contest that this is so. In the circumstances, I hold that the guarantee is enforceable and that the plaintiff is authorised to complete the document by filling in the name of Development Ltd. as the debtor and I so Order.

ISSUE B (i)

FIRST TRADE TRANSACTION

This transaction demonstrates once again the fraudulent manipulation by the Chief Executive Officer of the bank, Donovan Crawford. The transaction is steeped in fraud.

C.N.B. Ltd. deposited with First Trade International Bank and Trust Limited US\$25.5 million. First Trade in a reciprocal agreement loaned to C.N.B. Holdings Ltd. US \$16 million to Development Ltd. US \$6 million and to Shelltox Ltd. US \$3.5 million. C.N.B. Holdings Ltd., Development Ltd. and Shelltox

Ltd. failed to repay the loans and First Trade Ltd. set off the bank's deposit against the debts. In November 1995, First Trade Ltd. went into liquidation. It is to be noted that First Trade was licenced in 1993. It survived for a mere two years.

In October 1993 a sum of US\$150,000.00 was deposited to the Account of C.N.B. Ltd. standing at First Trade Ltd. In 1995 the Statement from First Trade Ltd. showed a balance as at October 30, 1995 of US \$81,802.00. When, therefore, First Trade was liquidated it owed C.N.B. Ltd. US\$81,802.00 which is unaccounted for and which must therefore be reckoned as a loss.

ISSUE B (ii)

The plaintiff contends that the third, fourth and fifth defendants, Donovan Crawford, Valton Caple Williams and Balmain Brown are negligent in allowing C.N.B. Ltd. -

- (i) to enter into the First Trade/Tower Bank transaction;
- (ii) to deposit funds with a financial institution (the Second First Trade transaction) when it was patently unsafe to do so.

The plaintiff argues that Crawford, Williams and Brown acted in breach of their common law duty of care and their contractual and fiduciary duties to the Bank in allowing the bank to enter into the First Trade transaction. The plaintiff further contends that the breaches by the defendants, named above, directly caused the losses suffered by the Bank as a result of the transactions.

To properly understand the contention of the plaintiff, it is necessary to set out a summary of the First Trade Transactions. First Trade was licensed and commenced business in October 1993. Crawford, the Chief Executive Officer of the plaintiff's bank was a director of First Trade. Within two months of First Trade Ltd. commencing operations, C.N.B. Ltd. began depositing large sums of money with this fledgling institution. C.N.B. Ltd. deposited US \$25.5 million with First Trade "in reciprocity for First Trade lending to Holdings Ltd. US \$16 million, to Development Ltd. US\$6 million and to Shelltox Ltd., US \$3.5 million. It will readily be seen that the loans amounted to US \$25.5 million. It may well be argued that the deposit of US\$25.5 million by the Bank was to guarantee the loan to these three entities. It is important to show how these companies are inter-related.

The majority shareholders of C.N.B. Holdings Ltd. are the defendant Crawford, his mother Alma Crawford and Regardless Ltd., a company in which all the shares are owned by Crawford, his wife Claudine and his children Donovan and Sian. The defendant Williams was also a shareholder in C.N.B. Holdings Ltd.

In respect of Century National Bank Ltd., C.N.B. Holdings Ltd. was the majority shareholder. The Bank was therefore controlled by Crawford and his family. It may well be referred to as a "family affair".

Donovan Crawford, owned 99.99% of the shares in Development Ltd. This is evidenced by the last annual return filed with the Registrar of Companies

by Development Ltd. Crawford disputes this in his pleadings and says that C.N.B. Holdings Ltd. was the majority shareholder in Development Ltd. It will be remembered, however, that C.N.B. Holdings Ltd. was controlled by Crawford and his family.

Shelltox Investments Ltd., a company incorporated in the Bahamas was owned and/or controlled by C.N.B. Holdings Ltd., Development Ltd., Donovan Crawford, and Valton Williams.

The composition of the companies Holdings Ltd., Development Ltd. and Shelltox Ltd. clearly indicates that the Bank's money was being used to guarantee loans made to entities owned and controlled by Crawford and his family and in which the defendant Williams also had a vested interest. These transactions were to say the least incestuous.

Mr. Hylton, Q.C., submitted that the defendants did not act honestly for the benefit of the Bank. The transaction would not have benefitted the Bank at all. Even if First Trade had not set off the debt or gone into liquidation the Bank would not have benefitted because the interest being earned would be used to pay loan interest owed by Holdings and Development, and not for the Credit of the Bank.

Further, the financial statements of Holdings Ltd. and Development Ltd. indicated that both companies were submerged in debt. The likelihood of these companies being able to repay the loans made by First Trade was remote. It was therefore a reckless act on the part of those who caused the Bank to enter

into the transaction. It cannot be denied that business is all about taking risks but recklessness and risk taking are completely different.

Glen Harloff, a forensic investigator from Price Waterhouse, Canada, the lead investigator into the affairs of the Century Financial Entities testified that apart from one extraordinary item relating to Holdings Ltd. in 1993, both Holdings Ltd. and Development Ltd. had been suffering losses for at least three years immediately preceding the First Trade transaction.

It is more than passing strange that months after the Bank's deposit was used to set off the debt of the defaulting companies, the Bank deposited a further US\$150,000.00 with First Trade Ltd. This account showed a balance of US\$81,802.00 at the time First Trade Ltd. went into liquidation. The plaintiff claims that as a result of the transactions with First Trade Ltd. the Bank suffered a loss amounting to US\$25,581,802.00.

Mr. Bailey, for Donovan Crawford, submitted that there was no evidence of negligence on the part of Crawford re the First Trade transaction. The basis of this submission is that the Bank suffered no loss as there is evidence that the US\$16 million was used to acquire shares in Jamaica Grande which shares it was ruled belonged to the Bank.

Mr. Hylton however, quite rightly, pointed out that the value of the Jamaica Grande shares is irrelevant in that the First Trade transaction had nothing to do with the acquisition of the shares.

So far as Crawford and Williams are concerned their modus operandi is clear. All these entities viz, Holdings Ltd., Development Ltd. and Shelltox Ltd. were being used as siphons to siphon off the Bank's money. In all their operations they became reservoirs of indebtedness. They showed no ability to liquidate their indebtedness, nevertheless they were allowed to borrow large sums of monies from the bank and the bank in turn was made to guarantee loans made to them. In the state of their indebtedness it was inevitable that the Bank would be called upon to satisfy any debt which it guaranteed on behalf of these companies. The companies were clearly insolvent and unable to pay their debts.

I shall now consider what the duties of the Directors are. The Learned author of *Palmer's Company Law 28th Edition volume 2 at paragraph 8.405* states:

"For most purposes it is sufficient to say that directors occupy a fiduciary position and all powers entrusted to them are only exercisable in this fiduciary capacity.

As agents they stand in a fiduciary relationship to the company as principal. The fiduciary relationship imposes upon directors duties of loyalty and good faith, which are akin to those imposed upon trustees properly so called. As agents, directors are also under duties of care, diligence and skill, but these duties are very different from the duties to be cautious and not to take risks which are imposed upon many trustees proper. Finally, as agents of the company directors' relationship with third parties need to be considered."

The overriding principle is that the director must act honestly and reasonably. At the same time it must be noted that mere errors of judgment and imprudence on the part of directors do not constitute either negligence or breach of duty.

The Learned Author of Palmer's Company Law, *supra*, at para 8.411 states:

"In determining whether a director has been guilty of negligence, the Court will take into account the character of the business, the number of the directors, the provisions of the articles, the ordinary course of management and practice of directors, the extent of their knowledge and experience, and, in short, all the special circumstances of the particular case."
[Emphasis mine]

What are the special circumstances of this particular case, in respect of Crawford and Williams? I will deal with the defendant Brown at a later stage.

- (i) Crawford and Williams are the Chief Executive Officer and Vice President of the Bank, respectively and also Directors.
- (ii) Crawford and Williams both have interest in Holdings Ltd., Development Ltd. and Shelltox Ltd.
- (iii) Both Crawford and Williams had knowledge of the First Trade Transaction from the outset.
- (iv) Crawford was a director of First Trade Ltd.
- (v) First Trade Ltd. had a share capital of US\$5,259,975.00 comprised of 210,399 shares of common stock at US \$25.00 per share.

How could any person with the experience of Crawford and Williams cause the Bank to deposit the sum of US\$25.5 million with such an institution

having a share capital of under US\$6,000,000? This type of conduct in my view borders upon recklessness. This was more than the taking of a risk in the ordinary course of business. Even a person with little or no experience in financial matters would have appreciated that this transaction was fraught with danger.

Crawford and Williams as Directors and Officers of the Bank failed to act in a manner which was consistent with the best interest of the Bank. The interest of the Bank was relegated to the back burner to serve the interests of Holdings Ltd., Development Ltd. and Shelltox Ltd. To say that they were negligent is to put it mildly. They were undoubtedly in breach of their common law duty of care as well as their contractual and fiduciary duties.

En passant it is to be observed that First Trade Ltd. commenced business on the 1st day of October, 1993 and by the 7th December, 1993, the Bank is depositing large sums of United States Dollars with this overseas bank that has absolutely no track record.

With respect to the defendant Brown he joined the Bank in April 1993 as Managing Director. His title was subsequently changed to that of President.

In respect of the First Trade transactions it must be noted that the documents supporting the transactions do not bear the signature of the defendant Brown. Further, Brown denies that he had any knowledge of the First Trade transactions. He testified that he had no knowledge of the First

Trade transactions until he was so advised on June 1, 1995, at a meeting with officials of the Bank of Jamaica.

A careful examination of the uncontroverted evidence raises serious questions about the credibility of Mr. Brown's testimony.

The evidence discloses that the deposits with First Trade began in December 1993, some eight months after Mr. Brown assumed the Presidency of the Bank. By March 1995 the deposits stood at US\$25.5 million. Is it likely that such large sums of foreign exchange could have been invested or deposited with an overseas institution without the President of the Bank being aware of the transaction? Even more striking is the fact that these large sums of foreign exchange were being deposited overseas at a time when the bank was experiencing cash flow problems and grave financial difficulties. I am unable to accept that the transaction could have taken place without the President's knowledge. Assuming, to be generous, that the transaction took place without his authority in his position as President he ought to have known. That is what diligence is all about.

It is difficult to find that Mr. Brown knew nothing of the transaction, when it is he who signed the financial statement of the Bank for the period ending June 30, 1994. The financial statements disclosed that there was a substantial increase in the sum due to the Bank from foreign banks. Did he not question this state of affairs? Or did he turn a blind eye to the situation?

Further, the evidence discloses that the department of the Bank which dealt with deposits, viz, Finance and Investments Department fell within the area of Brown's responsibility. The Vice President of that department reported directly to Mr. Brown, as is evidenced by the organizational chart. It is to be noted, however, that Mr. Brown denied that Mr. Williams reported directly to him.

The most cogent piece of evidence which leads me to find that Mr. Brown knew of the First Trade deposits is a memorandum which he addressed to the Chief Executive of the Bank, Don Crawford. In that memorandum he described First Trade as "a winner" and encouraged closer ties with Mrs. Amber Elliott who handled the Bank's affairs at First Trade. When confronted with this damning evidence, Mr. Brown offers the strangest of explanations, to wit, that he was not commending the transaction with First Trade but was only commenting upon what he had been told about the investment in First Trade.

On June 13, 1995, Mr. Brown wrote two letters to the Bank of Jamaica explaining the First Trade transaction in detail. Notwithstanding the detailed nature of the letters vital information was omitted.

Mr. Brown attended two meetings of the Board at which, to his knowledge, the Board was supplied with misleading information as to the transaction. The full facts surrounding the transaction were not revealed to the Board and Mr. Brown sat in awesome silence.

The cumulative effect of all this evidence compels one to conclude that Mr. Brown was not a witness of truth when he averred that he knew nothing about the First Trade transaction until he was so advised by the Bank of Jamaica.

There is also evidence that Mr. Brown signed on behalf of the Building Society the agreement by which the Building Society acquired some of the Jamaica Grande shares from Holdings Ltd. Mr. Brown concedes that he knew that the shares had previously belonged to the Merchant Bank, of which he was also the President and that Holdings Ltd. had paid US\$16 million for the shares. It will be recalled that the loan by First Trade to Holdings was US\$16 million on which Holdings defaulted and the Bank's deposit with First Trade was used to liquidate Holdings Ltd's indebtedness. It ought to have occurred to Mr. Brown, considering Holdings Ltd's financial position which was one of consistent loss that "something is rotten in the State of Denmark" or more appropriately something is rotten in the Century Financial Entities. He closed his eyes. He literally blindfolded himself and without displaying the diligence and prudence required of him, approved the transaction.

To compound the matter he signed letters authorising Towerbank to use interest, due from it to the bank, in settlement of interest due from Holdings Ltd. to Development Ltd.

All these actions on the part of Mr. Brown lead me to conclude that he, along with Crawford and Williams, was involved in a scheme in which the

Bank's money was being used to satisfy the indebtedness of companies in which Crawford and Williams had financial interests.

I, therefore, hold that all three Defendants, Crawford, Williams and Brown acted negligently and in breach of their fiduciary duties and are therefore liable for the losses suffered by the Bank in respect of the First Trade transaction.

ISSUE B (iii)

The plaintiff contends that in addition, and in the alternative to recovering from Crawford, Williams and Brown for the losses suffered, as a result of the First Trade transaction, it is also entitled to recover from Holdings and Development Ltd., the losses in respect of the First Trade transaction.

Mr. Hylton, Q.C., submits that Holdings Ltd. and Development Ltd. were the ultimate beneficiaries of the deposits by the Bank with First Trade and as such they must account to the Bank for such losses. Further, even the interest due to the Bank as a result of its deposits with First Trade and Tower Bank was wrongly appropriated to satisfy the interest obligation of Holdings Ltd. and Development Ltd. to First Trade Ltd. The plaintiff contends that Holdings Ltd. and Development Ltd. are liable to the Bank even in the absence of a contractual nexus or a breach of duty giving rise to a cause of action in negligence.

Relying on the principle of subrogation, Mr. Hylton, Q.C., submitted that where at least two persons are liable to a single creditor for a debt, and one is "principally" or "ultimately" liable while the other is liable as a "secondary"

debtor, the creditor is entitled to recover from the "ultimate" or "principal" debtor.

In the instant case Holdings and Development Ltd. would be the "principal" or "ultimate" debtors and the Bank would be the secondary debtor in the First Trade transaction.

The Bank's deposit having been utilized to satisfy the indebtedness of Holdings and Development Ltd. to First Trade acting on the principle of subrogation the Bank would be entitled to recover from Holdings and Development Ltd.

See *In Re Downer Enterprises Ltd.* (1974) 2 All E.R. 1074 at p 1084 where Pennycuik V.C. opined that the person who would ultimately be liable for the debt is the ultimate debtor and he would be liable to reimburse the secondary debtor if the secondary debtor were called upon to pay and did in fact pay.

There is no issue joined, that Holdings and Development Ltd. defaulted in respect of the loans made to them by First Trade Ltd. and that the Bank's deposit at First Trade Ltd. was used to reimburse First Trade Ltd. Acting upon the principle enunciated above both entities are liable to the Bank. It matters not that Crawford, Williams and Brown have been adjudged liable to the Bank, as well.

If Crawford, Williams or Brown have to pay they are entitled in law to recover from Holdings and Development Ltd. The Bank guaranteed the loans to both entities and had to pay when they defaulted. The Bank is therefore

entitled to recover the amounts paid to First Trade Ltd. on behalf of Development Ltd. and Holdings Ltd.

ISSUE C

NEGLIGENCE AND BREACH OF FIDUCIARY DUTY

The Plaintiff alleges that due to the negligence and breach of duty of Crawford, Williams and Brown, it suffered losses other than the loss sustained in the First Trade Ltd. transactions.

These other losses, it is contended, have arisen out of instances where there were conflicts between the personal interests and the corporate duties of the directors.

What are these other losses to which the plaintiff refers?

- (i) Losses suffered by the Bank and Building Society as a result of the loans made to Corporate Defendants.

In respect of these loans there were no loan agreements and no fixed terms of repayment. The corporate entities were experiencing financial hardships. They were unable to service the debt. The debts were unsecured. These loans consisted of large sums of money.

These loans were personally approved by Crawford, Williams and Brown, who were not only directors of the Bank and Building Society, but holders of senior management posts in both institutions.

Richard Downer, the temporary manager, testified that the loans to the corporate bodies were not made in keeping with good banking practice.

Brown himself admitted that the loans were not made in accordance with the requirements of prudent banking practice.

The involvement of Crawford and Williams is significant in that they had interests in the Companies to which the loans were made. This was clearly a conflict of interest and a breach of fiduciary duties. There was a shortfall of some \$750,000,000, between the balance owing by the Defendant companies and their assets.

The learned author of *Palmer's Company Law volume 2 at para 8 - 516* states:

"Like other fiduciaries, directors are required not to put themselves in a position where there is a conflict (actual or potential) between their personal interest and their duties to the company or between their duty to the company and a duty owed to another person."

Continuing at paras. 8.536 - 8.537 the author says:

"A director of a company may not make a secret profit for himself from the use of corporate assets, information or opportunities. This principle, which has its origins in the no-conflict rule, has probably now attained the status of a separate rule. The use by the director of corporate assets to make a secret profit for himself is clearly a breach of his fiduciary duty."

- (ii) Payments were made to Crawford and Williams by the Bank which were not reflected in the Bank's records as being payments in respect of their emoluments. The plaintiff contends that these payments were unauthorised and that neither Crawford nor Williams was entitled to the amounts paid.

I set out below the payments which are in dispute.

CRAWFORD

- (i) US\$ 54,073.00 paid on 21.12.93
- (ii) US\$117,300.00 paid on 18.4.95
- (iii) US\$ 64,774.00 paid on 25.8.94
- (iv) US\$ 71,074.00 paid on 27.5.96

Total US\$307,221.90

The plaintiff claims interest at the rate of 8% per annum from May 27, 1996.

- (v) J\$ 159,982.00 paid on 28.10.94
- (vi) J\$ 860,227.00 paid on 19.10.94
- (viii) J\$ 152,888.58 paid on 9.8.95

Total J\$1,173,097.58

Interest is claimed at 49% per annum with effect from August 9, 1995.

WILLIAMS

- (i) US\$ 87,339.00 paid 21.12.93
- (ii) US\$ 19,618.50 paid 14.4.94
- (iii) US\$ 19,618.50 paid 22.6.94

Total US\$126,576.00

Interest claimed at the rate of 8% per annum with effect from June 22, 1994.

Glen Harloff, testified that he examined the books in respect of the payments listed above which were paid to Crawford and Williams and that he found no supporting vouchers in respect of these payments.

Crawford gave no evidence in the case. Williams gave evidence but breathed not one word about the payments which the plaintiff contends were unauthorised.

In the absence of supporting vouchers I conclude that the payments were unauthorised. Both Crawford and Williams were not entitled to these payments. They were busy helping themselves to the bank's funds.

These payments constitute a misapplication of the Bank's funds. Directors of the Company, Crawford, Williams and Brown are jointly and severally liable for the loss suffered by the Bank as a result of these unauthorised payments.

In *Walker v. Wimbourne and Others* [1975 - 1976] 137 CLR 1 the High Court of Australia held in respect of misapplication of company's funds as follows:

"Once again the inference is irresistible that there was a misapplication of the company's funds, a misapplication which occurred because the directors disregarded, and were blind to their duty to act in the best interests of Asiatic. Accordingly, there was a misfeasance and in this instance it may be safely concluded that the whole of the moneys paid away have been lost."

In considering whether all the directors of the company should be held liable the Court concluded:

"Although D.J. Wimbourne made the decision to make the payments I see no reason for excluding R.J. Wimbourne from responsibility for what occurred. It is scarcely conceivable that as governing director he was unaware that Asiatic was making these payments. And

if he was unaware this in itself reflects a gross disregard for the company and its affairs."

It is against this background that the liability of the defendant Brown must be considered. Did he know that the unauthorised payments were being made to Crawford and Williams? If he did not know, does his lack of knowledge reflect a gross disregard for the company and its affairs?

The evidence in the case leads me to conclude that Crawford's position as Chief Executive Officer of the Bank and Chairman of the Board of Directors and his relationship with Williams, himself, a Vice President and Director, caused Brown to close his eyes to many things which did not meet his approval. However, this does not exonerate him because he owes a duty to the institution of which he is a senior officer and Director. His failure to act makes him liable along with Crawford and Williams for all these losses suffered by the Plaintiff.

ISSUE D

EQUITABLE MORTGAGES

Paragraph 22 of the Statement of Claim in Suit CL1996/C330 states:

"In order to induce CNB to grant the overdraft facilities referred to in paragraphs 11 and 14 thereof, and as security for their indebtedness to CNB:

- (a) The 3rd Defendant created equitable mortgages by deposit of title deeds in favour of CNB over the lands comprised in the following Certificates of Title:
 - (i) Volume 1129 Folio 802 - 2A Sterling Castle, Red Hills
 - (ii) Volume 1127 Folio 720 - Lot 5 Sterling Castle

(b) The 3rd Defendant and the 9th Defendant created equitable mortgages by deposit of title deeds in favour of C.N.B. over the lands comprised in the following Certificates of Title:

- (i) Volume 1185 Folio 828 - Lot 1 Strata 298, Sterling Castle
- (ii) Volume 1185 Folio 829 - Lot 2 Strata 298, Sterling Castle, Red Hills
- (iii) Volume 1185 Folio 832 - Lot 5 Strata 298, Sterling Castle
- (iv) Volume 1185 Folio 833 - Lot 6 Strata 298, Sterling Castle
- (v) Volume 1185 Folio 834 - Lot 7 Strata 298, Sterling Castle."

It was submitted on behalf of the Plaintiff that in depositing the title deeds set out above the defendants Donovan Crawford and Alma Crawford intended to create and did create equitable mortgages in favour of the Bank.

Halsbury's Laws of England 4th Edition Volume 32 at paragraph 429

states:

"A deposit of title deeds does not in itself create a charge, and mere possession of deeds without evidence of the contract under which possession was obtained, or of the manner in which the possession originated so that a contract may be inferred, will not create an equitable security. The deposit is a fact which admits evidence of an intention to create a charge which would otherwise be inadmissible, and raises a presumption of a charge which throws upon the debtor the burden of rebutting it. A mere deposit of title deeds upon an advance, with intent to create a security on them, but without a word passing, gives an equitable lien so that, as between debtor and creditor, the fact of

possession of title deeds raises the presumption that they were deposited by way of security."

In the absence of any evidence from Donovan Crawford and his mother Alma Crawford in whose names all the above titles stand, the presumption raised, that the deeds were deposited by way of security has not been rebutted. Accordingly, I hold the titles referred to above are subject to an equitable mortgage in favour of the plaintiff.

ISSUE E

VALIDITY OF TRANSFER - RE PADDINGTON TERRACE

Prior to August 22, 1991, the Bank owned premises, 1 Paddington Terrace, Kingston 6. Regardless Ltd. a company, wholly owned by Donovan Crawford acquired the premises from the Bank on August 22, 1991 for \$1,813,612.00. The circumstances of the acquisition are indeed curious.

The minutes of the meeting of the Bank's Board on March 27, disclose that the following resolution was passed by the Board.

"The Chairman/Managing Director is hereby given formal approval by the Board to purchase No. 1 Paddington Terrace at book value plus 10% with the option to pay for same within 12 months and as suggested by Mr. Hadeed, a deposit of Ten Thousand Dollars (\$10,000.00) be paid and a legal agreement drafted to reflect this arrangement."

The plaintiff contends that the transaction is invalid due to the circumstances of the transaction and moves the Court to set aside the transaction and declare the plaintiff the true owner of the premises.

What are the circumstances adverted to by the plaintiff?

- (i) Glen Harloff testified that the book value of the property as at August 1991 was \$2,824,417.00.
- (ii) A valuation done for Crawford, the Chief Executive Officer of the Bank, by Orville Grey and Associates on October 31, 1990 states that the property had a market value of \$4 million.

N.B. The valuation report states expressly that instructions to do the valuation were at the instance of Crawford himself.
- (iii) Notwithstanding the knowledge which he had, Crawford, Chairman of the Board, Chief Executive Office of the Bank and the owners of Regardless paid the princely sum of \$1,813,612.00 for the property.

Is the transaction valid?

Palmer's Company Law Volume 2 at paras 8 - 517 to 8 - 518 dealing with the validity of contracts entered into by directors with the companies states:

"It has been seen earlier that the position of a director, vis-a-vis the company, is that of an agent who may not himself contract with the principal, and that it further is similar to that of a trustee who, however fair a proposal may be, is not allowed to let the position arise where his interest and that of the trust may conflict.

It follows from these propositions that a director's power of contracting with his company are extremely limited. He may take up shares or debentures including convertible debentures of the company (though he cannot vote in respect of allotments to himself) and he may buy the right to subscribe for shares or debentures, although he is prohibited from buying options in quoted shares or debenture. In other respects, he is, like a trustee, disqualified from contracting with the company and for a

good reason: the company is entitled to the collective wisdom of its directors, and if any director is interested in a contract, his interest may conflict with his duty, and the law always strives to prevent such a conflict from arising. The director may enter into a contract only if he makes full disclosure of all material facts to the members of the company, who then approve the contract. Not even if it can be shown that the contract in question is a fair one is the director allowed to enter into it, for the courts will not, in such cases, look into the merits, but adhere strictly to the rule that the possible conflict of interest and duty must not be allowed to arise. 'No man' said Lord Cairns L.C. 'can in this Court, acting as an agent, be allowed to put himself in a position in which his interest and duty will be in conflict.'

If for example, the directors agree to sell to one of themselves part of the property of the company, the company is entitled to have the sale set aside, or at its option, to sue the directors for breach of duty. So too, if a director, concealing his interest, sells through a third party, his property to the company, the company is entitled to reject the property and claim repayment of the purchase money, or to retain the property and claim damages for any loss sustained by the non-disclosure. The same rule applies to contracts in which the director is in any way interested, for example, with any company in which a director holds shares. The rule applies whether the shares are held in trust or beneficiary." [Emphasis mine]

Applying the above principles to the instant transaction it is clear to me that this transaction must not be allowed to stand, Crawford having failed to disclose to the Board the true market value of the property. The Board approved the contract not knowing the true facts. It matters not that the contract might have been a fair one. The Court discourages situations in which possible conflict of interest and duty may arise. The Court in such circumstances will not address its mind to the merits of the transaction.

In the circumstances, I order that the transfer of 1 Paddington Terrace to Regardless Ltd. be set aside and the plaintiff is hereby declared the true owner of the property.

ISSUE F

COUNER CLAIM

The defendant Balmain Brown, claimed against the Plaintiff, damages for wrongful dismissal and in the alternative damages for breach of contract.

- (i) Outstanding Re-imbursable Expenses - \$92,630.33
- (ii) Payment due upon termination of contract - \$6,921,151.70

The claim by the fifth defendant Balmain Brown gives rise to the question whether the plaintiff was entitled to dismiss the defendant summarily.

There is evidence that Brown committed acts which were in breach of his fiduciary duties. It is established law that where an employee is guilty of habitual neglect in the performance of his duties, the employer is entitled to dismiss him.

In *David Lashley and Partners Inc. v Bayley* (1992) 44 WIR 44 at pp 50j - 51a:

Husbands JA, said:

"As a general principle there is good ground for dismissal of a servant if he is habitually neglectful in respect of his duties for which he is engaged, but not if there is only an isolated instance of neglect, unless attended by serious consequences. In *Jupiter General Insurance Co. v. Sebroff* [1937] 3 All E.R. 67 Lord Maugham in his Judgment stated 'it must be remembered that the test to be applied must vary either with the nature of the business and position held by

the employee and that decisions on other cases are of little value."

In *Harmer v Cornelius* (1858) 141 ER 93 at p 98 Willes J stated:

"But it seems very unreasonable that an employer should be compelled to go on employing a man who having represented himself competent turns out to be incompetent.

Misconduct in a servant is according to every day's experience a justification for discharge. The failure to afford the requisite skill which has been expressly or impliedly promised, is a breach of legal duty and therefore a misconduct. It appears to us that there is no material difference between a servant who will not, and a servant who cannot perform the duty for which he is hired."

Mr. Hylton submitted that the evidence showed a clear pattern of habitual neglect on the part of Brown as President of the Bank. As President of the Bank, it was his duty to oversee the proper running of the bank.

He referred to the following uncontroverted evidence to support his allegation of habitual neglect.

- (i) By memorandum addressed to Brown, dated July 12, 1993, the then General Manager of Credit Administration expressed his concerns about the general operations of the Bank. He pointed out that for months the Bank's customers were allowed to operate unauthorised overdrafts without effective controls, that inadequate information was being obtained on customers who operated accounts, resulting in bad loans, kiting, litigation and skip accounts.

- (ii) By memorandum dated May 26, 1994 Brown, himself, noted that Holdings Ltd. owed the Bank \$30,000,000.00. This caused Brown little or no concern. He contented himself with the fact that Development Ltd. another Crawford entity had given an unlimited guarantee in respect of loans to Holdings Ltd.
- (iii) In a memorandum dated June 12, 1995, the then Group Internal Auditor commented:

"The majority of credit files are not kept as required. These files cannot be referred to as official records of the bank supporting credit relationships. They do not have enough information to facilitate review by the audit department."

The state of affairs caused the Group's Internal Auditor to conclude as follows:

"This breakdown is a non-compliance of Internal Controls and in my view needs addressing urgently."

In addition, I have already stated in this judgment that Crawford, Williams and Brown were involved in a scheme in which the Bank's money was being used to satisfy the indebtedness of companies in which Crawford and Williams had financial interests. To crown it all, Brown referred to the devious First Trade Ltd. transaction as a winner. Had he, considering his experience in the world of banking, been diligent he would clearly have seen the First Trade transaction for what it really was, a mere sham.

The reasons for his dismissal which are clearly stated in Exhibit 5 at page 94, are set out below.

"23 August 1996

Mr. Balmain Brown
c/o Century National Bank Limited
14 Port Royal Street
KINGSTON.

Dear Mr Brown

Your employment with all or any of the following companies:

- Century National Bank Limited
- Century National Merchant and Trust Company Limited
- Century National Building society Limited

is terminated with immediate effect as a result of my discovery that you have issued misleading financial statements and engaged in unsafe banking practices and because you have issued unauthorised communications subsequent to the commencement of the Temporary Management contrary to specific instructions.

Kindly call Mr. Wilfred Baghaloo to make arrangements for the return of all items that are the property of the Bank including automobiles.

Yours very truly,

(Sgd.) R. Downer
Richard Downer
representative of the Temporary Manager"

The reasons for dismissal, as stated, are supported by the evidence which has been adduced, and which has been referred to ante in this judgment. I accept the evidence of Richard Downer, the temporary manager when he testified that Brown was involved in issuing misleading financial statements, as well as engaging in unsafe banking practices. He went on to explain that the

unsafe business/banking practice consisted of making loans to customers which were inadequately secured and sometimes even unsecured. Further he failed to ensure that the records of the bank were maintained in a state to assist in the collection of loans.

I am satisfied in the circumstances that the dismissal of Brown was justified. He is not entitled to the compensation claimed. The counter claim fails and there will be judgment for the plaintiff on the counter claim.

ISSUE G (i)

COSTS

The plaintiff contends that if it succeeds on the question of liability it is entitled to interest under the Law Reform (Miscellaneous Provisions) Act.

Section 3 of the Law Reform (Miscellaneous Provisions) Act states:

“In any proceedings tried in any Court of Record for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given, interest at such rate as it thinks on the whole or any part of the debt or damage for the whole or any part of the period between the date when the cause of action arose and the date of judgment:

Provided that nothing in this section -

- (a) shall authorise the giving of interest upon interest;
or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c)”

The above provisions make it clear that the Court has a discretion to award interest in circumstances such as the instant case. The question is, when should the Court exercise this discretion.

In *Tate & Lyle Food and Distribution Ltd. v. Greater London Council and another* [1981] 3 All E.R. 716 at page 722, Forbes J, in examining the reason for which interest is awarded in civil cases, opined:

“I think the principle now recognised is that it is all part of the attempt to achieve restitutio in integrum.”

The approach is not to look at the profit which the defendant wrongfully made out of the money but at the cost to the plaintiff of being deprived of the money he should have had. The defendants' use of the Bank's money for their own purposes deprived the Bank of the interest it ought to have earned by investing the said sums. In any event the Bank had to pay the depositors interest on their deposits.

I am of the view that the circumstances of the instant case warrant an award of interest.

The authorities are settled on the principle that the rate of interest to be awarded must be the rate at which the plaintiff can borrow money. See *Tate & Lyle's case* supra and *British Caribbean Insurance Company Limited v. Delbert Perrier* (S.C.C.A. 114/94).

As to the period for which interest should be awarded the observations of Lord Wilberforce in *General Tyre and Rubber Co. v Firestone Tyre and Rubber*

Co. [1975] 2 All E.R. 173 at p 188 are instructive. In essence Lord Wilberforce was of the view that interest should be awarded over the period for which the money was withheld.

Evidence was tendered to show the average commercial bank lending rates between 1994 and 1997 as published by the Bank of Jamaica and the average loan rate for May and June 1998. These statistics were the latest data available. For 1995, 1996, 1997 and 1998 the average lending rates were 50.13%, 53.04%, 48.81% and 44.06% respectively, resulting in an average rate over the period of 49.01%. This in my view is the appropriate rate to be applied to the local payments made to Crawford and Williams.

In respect of the US dollar sums including the First Trade Ltd. transactions, I accept the submission of Mr. Hylton, Q.C. that the plaintiff would be entitled to interest at the rate negotiated with First Trade Ltd. namely 8%. It has been pointed out that the deposits with First Trade Ltd. were made on different occasions and that the plaintiff would be entitled to interest from the date of each deposit. However, for ease of calculation the plaintiff asks that interest be awarded on the said sums as from the date of the last of each set of deposits, that is, January 21, 1994 for US\$6 million, June 29, 1994 for US\$16 million and April 1, 1995 for US\$3.5 million. This is not an unreasonable request and accordingly, I so order.

ISSUE G (ii)MAREVA INJUNCTION

The plaintiff claims a post judgment mareva injunction. On October 2, 1996, Panton J. granted the plaintiff a mareva injunction until the judgment. The plaintiff has urged that unless a post judgment mareva injunction is granted the defendants would be able immediately upon the delivery of this judgment to commence the dissipation of their assets to the detriment of the plaintiff.

It is not in issue that the Court has jurisdiction to grant a post judgment mareva injunction. However, in *Babanaft International Co. SA v. Bassatne and another* [1989] 1 All E.R. p. 433 the Court held that post mareva injunctions ought not to be granted in respect of property held in a foreign country "because it would involve an exorbitant and extra-territorial assertion of jurisdiction of an in rem nature over third parties outside the jurisdiction."

A post mareva injunction should be qualified by an express proviso making it clear that the injunction is directed to the defendant himself and does not affect the rights of third parties or seek to control their activities.

I am satisfied that this is an appropriate case in which to grant a mareva injunction with the proviso referred to above.

For the reasons contained herein, there will be judgment for the plaintiff against the defendants as set out below:

1. Judgment for plaintiff against C.N.B. Holdings Limited, Century National Development Limited, Donovan Crawford, Balmain Brown and Valton Caple Williams for:
 - (a) the sum of US\$16,000,000.00 being the amount deposited with First Trade to secure a loan of that amount made to CNB Holdings Limited by First Trade Ltd. with interest on the said sum at the rate of 8% per annum from June 29, 1994 until the date of judgment.
 - (b) the sum of US\$3,500,000.00 deposited with First Trade Ltd. to secure a loan of that amount made to Shelltox Investments Limited, with interest at the rate of 8% per annum from April 4, 1995 until the date of judgment.
2. Against Century National Development Limited, Donovan Crawford, Balmain Brown and Valton Caple Williams for -
 - (a) the sum of US\$6,000,000.00 deposited with First Trade Ltd. to secure a loan of that amount made to Century National Development Limited by first Trade Ltd. with interest on the said sum at the rate of 8% per annum from January 21, 1994, until the date of Judgment.
3. Against Donovan Crawford, Balmain Brown and Valton Caple Williams for -

- (a) the sum of US\$81,802.00 the credit balance in the Bank's account with First Trade Ltd. as at October 30, 1995 with interest at the rate of 8% per annum from October 30, 1995 until the date of Judgment;
- (b) the sum of \$331,155,010.76 (the balance due from CNB Holdings Ltd. to the Bank) with interest at the rate of \$49,680.43 per day from September 21, 1998 to the date of Judgment;
- (c) the sum of \$222,029,946.10 (the balance from CNB Holdings Ltd. to the Building Society) with interest at the rate of \$72,428.29 per day from September 21, 1998 to the date of Judgment;
- (d) the sum of \$372,238,921.18 (the balance due from Century National Development Ltd. to the Bank) with interest at the rate of \$55,763.35 per day from September 21, 1998 to the date of judgment.
- (e) the sum of \$17,170,285.61 (the balance due from Regardless Limited to the Building Society) with interest at the rate of \$2,626.90 per day from September 21, 1998 to the date of Judgment;

- (f) the sum of \$20,444,275.05 (the balance due from Fordix Limited to the Bank) interest at the rate of \$3,062.66 per day from June 21, 1998 to date of Judgment;
- (g) the sum of \$50,960,453.77 (the balance due from Spring Park Farms to the Bank) with interest at the rate of \$7,634.14 per day from September 21, 1998 to the date of Judgment.
- (h) the sum of \$30,077,452.64 (the balance due from Debroc to the Building Society) with interest at the rate of \$4,601.58 per day from September 21, 1998 to the date of Judgment.
- (i) the sum of US\$307,221.90 (being payment to Donovan Crawford) with interest at the rate of 8% per annum from May 27, 1996 to the date of Judgment.
- (j) the sum of \$1,173,097.58 (being payment to Donovan Crawford) with interest at the rate of 49% per annum from August 9, 1995 to the date of Judgment.
- (k) the sum of US\$126,576.00 (being payments to Valton Caple Williams) with interest at the rate of 8% per annum from June 22, 1994 to the date of Judgment.

4. Against Regardless Ltd.

- (a) whereby it is declared that the plaintiff is the beneficial owner of premises known as 1 Paddington Terrace and

comprised in Certificate of title registered at Volume 492 Folios 932 and 933;

- (b) that the said Regardless Ltd. shall within fourteen (14) days of being requested to do so, execute a transfer of the said property to the plaintiff's order.
- c) that in the event Regardless Ltd. shall fail to execute the said transfer the Registrar of the Supreme Court is hereby empowered so to do.
- (d) that all costs relating to the transfer be paid by Regardless Ltd.

5. Against Donovan Crawford and Alma Crawford for -

- (a) the sum of \$703,393,931.94 with interest at \$105,443.78 per day from September 21, 1998 being the total indebtedness of Century National Development Limited to the Bank pursuant to the instrument of guarantee signed by them.
- (b) It is hereby declared that the undermentioned Certificates of Title are subject to an equitable mortgage in favour of the plaintiff as security for the indebtedness of Donovan Crawford and Alma Crawford to the plaintiff.
 - (i) Volume 1185 Folio 828 - Lot 1, Strata 298 Sterling Castle

(ii) Volume 1185 Folio 829 - Lot 2, Strata 298 Sterling Castle

(iii) Volume 1185 Folio 832 - Lot 5, Strata 298 Sterling Castle

(iv) Volume 1185 Folio 834 - Lot 7, Strata 298 Sterling Castle.

(c) It is hereby ordered that the said Donovan Crawford and Alma Crawford shall within fourteen (14) days, of being requested to do so, execute legal mortgages in respect of the titles mentioned above in favour of the plaintiff, to secure their total indebtedness or part thereof to the plaintiff;

(d) that in the event the said Donovan Crawford and Alma Crawford shall fail or refuse to execute the said mortgages the Registrar of the Supreme Court is hereby empowered to execute the said mortgages;

(e) Donovan Crawford and Alma Crawford are being ordered to pay the costs of preparing and registering the said mortgages.

6. Against Balmain Brown -

whereby it is ordered that the Counter Claim filed herein be dismissed with costs to the Plaintiff to be taxed if not agreed.

7. Against CNB Holdings Limited, Century National Development Limited, Donovan Crawford, Valton Caple Williams and Regardless Limited whereby it is ordered that the mareva injunction granted on October 2, 1996, be extended until further order of the Court with liberty to apply. This injunction is in respect of the defendants' named therein and does not affect the rights of third parties or seek to control the activities of third parties.
8. The costs of these proceedings, which are to be paid by all defendants, are to be taxed if not agreed.