

No. 6

Notice of Originating Motion (O.8, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO. Civ. 85 of 2010



IN THE MATTER OF THE COMPANIES LAW (2007 Revision) (section 64 (b))

AND

IN THE MATTER OF AN APPLICATION FOR THE APPOINTMENT OF AN INSPECTOR IN RELATION TO BARRINGTON INVESTMENTS LTD. ON BEHALF OF THE ESTATE OF PETER VERNON WEBB Sr., aka VERNON BARRINGTON WEBB aka VERNON WEBB, Sr. (DECEASED)

NOTICE OF ORIGINATING MOTION.

TAKE NOTICE that the Grand Court of the Cayman Islands at the Law Courts, George Town, Grand Cayman will be moved on Monday, 1st February, 2010 at o clock in the fore/afternoon or as soon thereafter as counsel can be heard, by counsel on behalf of the Personal Representative of the Estate of Mr Peter Vernon Webb, Sr., aka Vernon Barrington Webb, aka Vernon Webb Sr., (Deceased) for an Order that Mr Christopher Dorrien Johnson of Johnson Smith Associates be appointed as an Inspector to examine into the affairs of , Barrington Investments Ltd. ("the company") pursuant to section 64 (b) of the Companies Law (2007 Revision) and upon the conclusion of his examination, to report thereon in such manner as this Honourable Court shall deem appropriate, his opinion to the Court .

AND for an Order that the costs of and incidental to this application and to any such examination and report shall be paid out of the assets of the company.

AND FURTHER TAKE NOTICE that the Grounds of this Application are:

- i. no record of meetings of the company subsequent to 25th June, 1997 have been produced;
- ii. there are no records of Minutes of meetings of the company, other than those dealing with the date of setting up the company and choice of the first Directors/Officers and Shareholders dated 25th June, 1997;
- iii. The initial Minutes authorize the application for a Trade & Business License to carry on the business of Building and Contracting and not a property development and sales company;
- iv. A preliminary report by Mr Chris Johnson who was employed to carry out an audit of the Company by Order made in Guardianship Proceedings, Relating to the Deceased styled Cause No. 219 of 2005 shows that there are many irregularities with the operations of the company from its inception and that he was deprived the opportunity to inspect the relevant and necessary records and documents of the company.
- v. Although no dividends appear to have been paid, cash seems to have gone out of the company in the form of shareholders' loans etc. resulting in a current overdraft of CI\$356,448.84 as at 20th November, 2009.
- vi. The last "unaudited" financial reports available for the company is for the year ending 2005;
- vii. The number of irrational charges being placed on the various properties of which the company is currently sole proprietor;
- viii. No or no proper accounting for the rental income that has been collected from both properties owned by the company, and properties which continue to be owned by the Deceased and now forming part of the Deceased's Estate;

- ix. The content of the aborted audit report commenced by Mr Christopher Johnson in the Guardianship Proceedings (copy of report attached)

Dated this 29th day of January, 2010.


BROOKS & BROOKS
ATTORNEYS AT LAW FOR THE APPLICANT

To: The Clerk of the Courts

AND TO: Barrington Investments Ltd
c/o Turner & Roulstone their Attorneys At Law
Strathvale House
George Town
GRAND CAYMAN

AND TO: Barrington Investments Ltd
c/o It's Registered Office
P O Box 432
George Town
Grand Cayman KY 1 - 1106

TIME ESTIMATE: 1 hour

THIS NOTICE OF ORIGINATING MOTION is filed by Brooks & Brooks Attorneys At Law for the Applicant herein whose address for service of process is Two, Artillery Court, George Town Grand Cayman

**REPORT TO THE GRAND COURT
OF THE CAYMAN ISLANDS
WITH REGARD TO
BARRINGTON INVESTMENTS LIMITED**

OCTOBER 1, 2009

**PREPARED BY
CHRIS JOHNSON ASSOCIATES LTD**

PREAMBLE

In accordance with the Court Order dated June 2, 2008 [Appendix 1] the firm of Chris Johnson Associates Ltd. ('the Company') was retained to conduct a full audit and investigation into Barrington Investments Ltd. ('the Company'). The terms of reference are contained in the letter dated July 24, 2009 [Appendix 2], and detailed hereunder:

- 1. The names and addresses and other information of the original subscribers to the Memorandum of Association of the said Company;**

As we have not had sight of the Memorandum of Association we are not aware of the original subscribers.

- 2. The amount of any paid up subscription in the capital of the Company together with the number and par value of any shares so subscribed and issued;**

The balance sheet as at December 31, 1997 and 1998 [Appendix 3] reflects that 100 shares of CI\$1 par value were subscribed and issued. We have not had access to the statutory records and thus unable to confirm that this is correct.

- 3. The identification of the original members of the Company together with the names and addresses of any subsequent members of the Company registered as such since the date of incorporation to the date of the Report;**

The Register of Members [Appendix 4] reflects that the 100 shares were issued to Cayman International Corporate Marine Services Ltd. and subsequently transferred on June 25, 1997 to:

| <u>Name</u> | <u>Address</u> | <u>No. of Shares</u> |
|----------------------|----------------|----------------------|
| Vernon Webb, Sr. | Savannah | 25 |
| Vernon Webb, Jr. | Savannah | 25 |
| Deborah Webb McField | George Town | 25 |
| Sharon M. Seales | George Town | 25 |

4. **The identification of the Directors of the Company together with the date of their appointment or resignation as the case may be from the date of incorporation to the date of the Report:**

The Register of Directors [Appendix 5] reflects the following:

| Name | Date of Appointment | Date of Registration |
|----------------------|---------------------|----------------------|
| Woodward L. Terry | June 25, 1997 | June 25, 1997 |
| Vernon B. Webb, Sr. | June 25, 1997 | |
| Vernon B. Webb, Jr. | June 25, 1997 | |
| Sharon M. Seales | June 25, 1997 | |
| Deborah Webb McField | June 25, 1997 | |

5. **A review of the returns filed with the Registrar pursuant to the requirements of the Companies Law or, if none or any, a report into any failure on the part of the Company so to comply; ***

We have not been granted access to the statutory records. However contained in Appendix 6 is a copy of the Certificate of Good Standing dated June 8, 2009 which is indicative that the company has filed annual returns.

6. **The identification of all property, real or personal, owned by the Company from the date of incorporation to the date of the Report setting out the dates of the acquisition of such property, the names and addresses of the Transferor of any such property, the amount (if any) of the consideration paid by the Company for such property and the names and addresses to whom such consideration (if any) was paid. In the event that any property of the Company has been disposed of the identification of the property so disposed, the names and addresses of the Transferees of the said property, the amount of the consideration (if any) paid by the Transferee to the Company for the said property and the date of any such disposal. We will include in the Report as to whether stamp duty was paid on the transfers of any property and, if so, in what amount and by whom was it paid;**

We have identified twelve parcels of land that were transferred to the company, one of which (Block 18D 202) has been subdivided into two parcels, 439 and 440. Copies of the the land registry documents and the land transfer forms are contained in Appendix 7:

| <u>Description</u> | <u>Block</u> | <u>Parcel</u> | <u>Date of Transfer</u> | <u>Transferor</u> |
|--------------------|--------------|---------------|-------------------------|--------------------------------|
| Land and Buildings | | | | |
| Crewe Road | 20D | 91 | 02.06.99 | V. Webb, Sr. |
| West Bay Road | 13B | 83/84 | 02.06.99 | V. Webb, Sr. |
| Eastern Avenue | 14CF | 130 | 02.06.99 | V. Webb, Sr. |
| Smith Road | 14D | 90 | 02.06.99 | V. Webb, Sr. |
| Land | | | | |
| Sound Road | 13D | 439/440 | 02.06.99 | V. Webb, Sr. |
| North Side | 59A | 148 | 02.06.99 | V. Webb, Sr. |
| East End | 74A | 16 & 67 | 02.06.99 | V. Webb, Sr. |
| Sound Way | 14C | 316/317 | 14.11.00 | V. Webb, Sr. & V. Webb, Jr. |
| Sound Way | 14C | 30 | 02.06.99 | V. Webb, Sr. & V. Webb, Jr. |

As noted later the land at North Side and East End was not recorded in the company's accounting records until the year ended December 31, 2005.

7. The identification of any charges or other encumbrances (legal or equitable) made over such property or the undertaking of the Company, the names and addresses of the persons in whose favour such property was charged, the amount of any monies loaned or foregone by any such charge or encumbrance and the purpose for such charge or encumbrance;

There were a number of collateral charges placed on the properties on Eastern Avenue. CI \$65,000 was borrowed from Fidelity Bank, formerly British America Bank in September 1994. In September 1999 this was increased by CI \$135,000

[Appendix 8] and by a further CI \$30,000 in December 2000 [Appendix 9].
 However the financial statements and summary thereof contained in Appendix 10
 disclose the following mortgages to be outstanding at December 31:

| | Principal | Principal | Interest |
|------|--------------------|--------------------|----------|
| | \$ | \$ | \$ |
| 1997 | 227,612 | 229,716 | 41,208 |
| 1998 | 229,612 | 239,521 | 43,574 |
| 1999 | 223,110 | 234,892 | 41,546 |
| 2000 | 231,544 | 239,521 | 46,742 |
| 2001 | 223,110 | 234,892 | 42,568 |
| 2002 | 216,991 | 226,114 | 41,245 |
| 2003 | 214,251 | 235,117 | 37,413 |
| 2004 | 206,017 | 229,275 | 31,648 |
| 2005 | 198,428 | - | 27,664 |
| 2006 | 191,884 | - | 31,156 |
| 2007 | 181,628 | - | 24,544 |
| 2008 | 167,389 | - | 15,060 |

We have concerns about the accuracy of these figures because:

- (i) certain amounts of principal as shaded above are the same;
- (ii) according to the land registry there was only one mortgage whereas the accounting records up and until 2004 disclose two mortgages;
- (iii) the amount of interest looks incorrect. For example in 2003 the amount of interest charged on the principal of \$449,368 was \$37,413 whereas in 2006 interest charged on the principal of \$191,884 was \$31,156.

We have concluded therefore that further investigation into the accounting records with regard to the mortgages, is required.

- 8. **A review of all transactions of the Company from the date of incorporation to the current date and reporting thereon;**

We have not been supplied with the accounting records of the company and are unable to review the transactions, other than those noted below which arise from our review of the financial statements.

9. A review of the financial statements from the date of incorporation to December 31, 2008 and reporting on the accuracy thereof;

We have reviewed the financial statements for the years ended December 31, 1997 to 2008 which are contained in Appendix 10. However we have not had access to the accounting records or supporting documentation. Our comments are as follows:

Balance Sheets

- (i) The Balance Sheet as at December 31, 1997 records six pieces of property with a value of \$1,183,480, although the transfers of the property did not take place until June 1999 and November 2000. Also recorded are two mortgages to Fidelity Bank totalling \$469,237 which were secured on Block 20D Parcel 91 and Block 14C Parcels 30/316/317, and interest free Shareholders' Loans of \$473,847.

We note that the East End and North Side properties comprising Block 74 Parcels 16/67 and Block 59A Parcel 148 later valued at \$450,000 were omitted from the balance sheets until December 31, 2005.

- (ii) The Balance Sheet dated December 31, 2005 shows that the Shareholders' Loans had increased to \$589,304 with the mortgages to Fidelity Bank being reduced to \$198,428. However the Balance Sheet and Statement of Income and Expense appear to be incorrect as the comparative figures reflected in the following years financial statements show a much different picture. Reflected in the Balance Sheet is the addition of the East End and North Side properties with a value of \$450,000. The Balance Sheet also reflects that the Shareholders' Loans had been repaid. There is also the creation of a Revaluation Reserve, although this term is incorrect. The Reserve was created by the:

\$

| | |
|---|------------------|
| Transfer of East End and North Side property | 450,000 |
| Valuation increase of Block 13B Parcels 83/84 | 14,520 |
| Reduction of mortgage and Shareholders' Loans | 687,279 |
| | <u>1,151,799</u> |

We have no explanation as to why the East End and North Side property was not recorded in the accounts until this year. We also do not know how one of the mortgages due to Fidelity Bank was repaid but the accounting entry would indicate that the shareholders made the repayment.

We further note that the 2005 comparative figures are incorrect in so much that \$6,255 has been included twice in the footings of \$1,672,810 [Appendix 10]. Similarly the 2004 Balance Sheet does not balance, by an amount of \$12,515. Whilst we do not necessarily attribute much to these small errors we would like to examine the underlying records in due course.

- (iii) Examination of subsequent Balance Sheets show that no land has been sold, but losses incurred in the years ended December 31, 2006/2008 which necessitated borrowings from Fidelity Bank. These stood at \$318,498 as at December 31, 2008. In addition the mortgage to Fidelity Bank of \$181,628 remained outstanding at that date.

The same Balance Sheet reflects that the Revaluation Reserve was \$3,562,264, although the increase actually took place during the year ended December 31, 2007. However a comparison of the land values at December 31, 2006 and 2007 show values of \$1,648,000 and \$4,014,440 which gives rise to an increase of \$2,366,440, thereby increasing the reserve to \$3,517,392. We have no explanation for this anomaly.

Statements of Income and Expenses

- (iv) Rental income has remained reasonably consistent over the twelve years. However, we would have thought that increases would have been made over this period of time;

- (v) We do not know the recipient of the management fees that were paid nor do we know why no fees were paid in 2005 and 2006;
- (vi) A pension commenced in 2005 but there was no pension paid during the year ended December 31, 2008. We do not know the identity of the recipient;
- (vii) It is clear that the company will continue to lose money unless the rental is increased or expenses curtailed.

10. Include in the Report all related party transactions, any transactions at an under value or not at arm's length, and unusual transactions;

The related party transactions that we have identified to date are the transfers of land into the company by Mr. Webb, Sr. and Mr. Webb, Jr. and the Shareholders' Loans which require further investigation. It is likely that the salary and pension are paid to a family member but we have not been given access to the accounting records.

11. Preparing financial statements from January 1, 2009 to the date of the Report, or thereabouts;

As we have not had access to the underlying accounting records and other documentation we are unable to prepare the financial statements.

In conclusion we believe that further investigations are necessary in particular with regard to the Fidelity Bank mortgages, the Shareholders' Loans and the reasons to why certain land was not included in the accounting records until December 2005.



Christopher D. Johnson

October 1, 2009
Date