

IN THE SUPREME COURT OF BELIZE, A.D. 2017

CLAIM NO. 131 OF 2016

BETWEEN:

SITTE RIVER WILDLIFE RESERVE ET'AL

CLAIMANTS

AND

THOMAS HERSKOWITZ ET'AL

DEFENDANTS

BEFORE: the Honourable Justice Courtney Abel

Mr. Rodwell Williams, SC }
Ms. Lissette Staine } for the Claimants
Mr. Yohannseh Cave }
Ms. Stacey Grinage } for the Defendants

21ST FEBRUARY, 2017

MORNING SESSION

(Court convened at 9:00 A.M.)

5 THE COURT: Appearances?

MR. WILLIAMS: May it please you My Lord, in appear in this matter along with Ms. Lissette Staine on behalf of the Claimants and my friends Mr.

5 THE COURT: No that's okay, then that would make more sense.
Let's get your witness---

MR. WILLIAMS: And then we could see where we are, whether before
3:00 or beginning tomorrow, I was undertaking only
to call one more witness really and that's Usher.

10 THE COURT: He is Tab what in the bundle?

MR. WILLIAMS: 13.

WITNESS SWORN

EXAMINATION IN CHIEF OF JOHN USHER BY MR. WILLIAMS

Q. Your name is John Usher?

15 A. Yes.

Q. You live is Sittee River, Stann Creek District of Belize?

A. Correct.

Q. And Mr. Usher you made a witness statement in this matter which is
dated the 30th of May, 2016?

20 A. That's correct.

5 Q. Did you sign your witness statement?

A. I did.

Q. And if you were to be shown it, would you be able to recognize it?

A. I would be able to.

Q. Is that your signature?

10 A. Yes.

Q. Now attached to your witness statement is a bundle of several documents?

A. Yes.

15 Q. There are a number of documents exhibited to your witness statement I think numbered, I am not sure of the numbering I think they get into alphabetical JU1 down to 1P or A to P or something like that. But let me ask you---

20 MR. WILLIAMS: My Lord, there is one document that my friend has indicated he wish to object to and I guess I can have him identify for the benefit of the court.

5 Q. In your bundle Mr. Usher, there is a document, I think it's the last document P at the very end an email, you see that document between one Cathy Ellis and one Thomas Herskowitz?

A. Right.

10 MR. WILLIAMS: My Lord, just before I really ask for the document entry, I think my friend would want to take---

THE COURT: Are you objecting to a document, which one?

MR. CAVE: The document which is attached to paragraph 66 which is just referred to.

15 Our application is promise upon the same grounds of the last in that...sorry, promise on the Rule, Rule 29 we say My Lord, that the particular evidence is inadmissible.

THE COURT: The Exhibit is it?

MR. CAVE: The exhibit yes.

20 THE COURT: An email from Thomas Herskowitz---

5 MR. CAVE: A purported email between Thomas Herskowitz and Kathleen Ellis.

THE COURT: But Thomas Herskowitz is a witness in this case.

MR. CAVE: That is correct My Lord.

THE COURT: So why isn't that admissible?

10 MR. CAVE: Well, first of all My Lord, we say that it doesn't comport with the requirements of the Electronic Evidence Act, in that it proposes My Lord, through this witness statement and the attachment to tender that which amounts in the circumstances the
15 Electronic Evidence falling within the definition of Chapter 95 01 and we say further My Lord, that that Section requires a certain foundation for the admissibility of documents, we say that the foundation or the evidence in support that foundation
20 cannot be supplied by this witness.

If I may take Your Lordship through the provisions of the Electronic Evidence Act which we say are

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applicable, not a particularly long piece of Legislation
My Lord.

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The Electronic record under the interpretation portion
of the legislation My Lord, and the “electronic record
means data that is recorded or stored on any medium
in or by a computer system or other similar device
and that can be read or perceived by a person or a
computer system or other similar device and includes
a display, print out or other output of that data,”

15

It is defined just above that My Lord, as meaning
representations, in any form, of information or
concepts.

20

Now it is important My Lord, to put I believe this piece
of legislation in context because usually it is the case
and I am sure my learned senior would agree that
issues of authenticity goes to the weight,
considerations are weight, considerations are credit
and therefore it’s a matter for the tribunal of fact.

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The issue related here My Lord, is not related to issues of weight but issues of admissibility because the Legislature in creating this piece of legislation have provided a special framework for the admissibility of certain information or evidence which fall within the definition of the Act and the chief requirement My Lord, of that this piece of legislation is that there must be some evidence capable before as a recondition of its admissibility, there must be some evidence capable of establishing its authenticity.

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THE COURT: He's challenging the authenticity of this document?

MR. CAVE: My Lord, my position is slightly...based on the legislation, I would just clarify my position. My position in relation to authenticity is that that is a requirement and I point My Lord, to specifically to Section 5 of the Legislation and this is to establish...this section I believe My Lord, establishes quite clearly that there'll be issues of authenticity being referred to here are not authenticity in relation

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that the court would have to consider at the end of trial but these issues are issues that the court would have to consider as a precondition to the admissibility of the document; because Section 5 reads My Lord:-

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“For the person seeking to introduce an electronic record in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.”

So that person My Lord---

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THE COURT: Was this disclosed, this document? Is there a Rule in---

MR. WILLIAMS: 28.18 (1) and (2)

THE COURT: Yes, go on.

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MR. CAVE: Yes My Lord, we say...My Lord, do you wanted me to address specifically the one that...the Procedure Rule that you referred to, if the court wishes me to address that now I can.

5 THE COURT: Yeah, is a notice being served.

MR. CAVE: No please My Lord, not as far as I am aware.

THE COURT: Aren't you deem to have been admitted the authenticity of this document, because you didn't serve notice?

10 MR. CAVE: My Lord, we say that the Procedural Rule under 28.18 is superseded by the Substantive Legislative Provisions of Chapter 95.01. If Substantive Legislative Provision we say is pre-eminent and we say My Lord, that to the extent that Section 5 of that
15 Legislation imposes a burden on the person who seeks to introduce such evidence. The burden of proving its authenticity that particular Legislative precondition must be satisfied, we say that it has not been.

20 My Lord, we say further that---

THE COURT: Isn't your objection premature though?

5 MR. CAVE: Well, no My Lord, it isn't because this is the point at
which they seek to introduce it, they seeks to have
the court admit it and at Paragraph 5 of the
Legislation speaks to the point at which we are now
which is the person...the point at which the person
10 seeks to introduce it.

My Lord, I began by putting this in the particular
context because I fully understand that there's a
various between this position as provided for within
this legislative framework and what is usually the
15 case because if I were in the ordinary situation
circumstance to suggest to this court that this thing is
not authentic the court would rightfully be in a
position to say to me, well then leave that to the end
of trial and address the court on that or cross
20 examine on it.

But what the Legislation is saying is not that this is a
matter for the end of trial and determination by the
tribunal of fact after all the evidence is led in relation
to it, what this legislation is saying clear that at the

5 point of which the evidence is sought to be introduced to this court at the point at which my learned senior seeks to tender it---

THE COURT: Isn't this evidence an email?

10 MR. CAVE: Yes My Lord, and we say that it falls within the definition of Electronic Evidence under the Electronic Evidence Act, its electronic mail.

THE COURT: But it's a printed copy.

MR. CAVE: Yes My Lord, of electronic mail.

15 My Lord, the definition section if I may take you back to that Section My Lord, that electronic record includes a display, print out or other output of that data.

20 The fact My Lord, that it's a printed copy we say doesn't change the nature of it, it's an electronic record.

THE COURT: But it talks about computer system or other similar device, it to deal with records stored in the device.

5 MR. CAVE: My Lord, we say My Lord, and the definition says any data that is recorded or stored in any medium in or by a computer system or other similar device.

THE COURT: And that can be read or perceived by a person or a computer system or other similar device and includes
10 a display, print out or other output of that data.

MR. CAVE: My Lord, I believe this very issue confronted Your Sister Madam Shona Griffith in a case that I think that was recently concluded, I don't have the decision as a matter of fact I am not sure whether a written one has yet been issued but the similar issue confronted the court in relation to an attempt to tender electronic mail, this is...I am not relying on this but the court took the position in that case as well that email constituted electronic record for which a certain
15 foundation ought to be established prior to its admission, it maybe that the court in that instance made the determination that that particular foundation be establish we say in this case that it hasn't been.
20

5 THE COURT: What are you saying that it is not possible to...assuming you're correct that it's not possible for the foundation to be establish---

MR. CAVE: Not by this witness providing this court with legally admissible evidence because the issues of authentication which the court ought to be providing--

10 --

THE COURT: Is your Client challenging the authenticity of this document?

MR. CAVE: Absolutely My Lord, absolutely, that has been his consistent position from the first time he saw it, and My Lord, I don't want to get into the facts of it, but if persons supposedly produce this document is present in court and the other side never bothered to call them.

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THE COURT: Isn't there requirement for notice to prevent any kind of ambush?

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MR. CAVE: My Lord, I don't subscribe My Lord, respectfully to the notation that there was any ambush in this matter. I

5 don't understand...I don't subscribe to the view that
there are some expectation on the part of the other
side that...and I know my learned senior and I don't
doubt when my learned senior said in relation to
whatever might have been discussed am not privy to
10 that, not that am saying that it is not true, I'm not privy
to it so I'm not in a position to say one way or the
other and my learned friend who was involved---

THE COURT: Have you given notice of the intention to challenge
the authenticity of this document?

15 MR. CAVE: You mean under Part 28.12---

THE COURT: Did you give any notice?

MR. CAVE: We have in accordance with paragraph 28.12.

THE COURT: Did you give any notice?

MR. CAVE: Not before this morning My Lord, but there's clear
20 authority on the point and this has happen---

THE COURT: Which clear authority?

5 MR. CAVE: My Lord, there is authority on the point that the trial
is the appropriate place at which to deal with this
issue and routinely My Lord, there are challenges to
portions of witness statements made on the day
when that statement is sought to be tendered, that is
10 the situation that obtains usually My Lord, there are
times when you know I am sure, it's the peculiar of
what I am saying My Lord, it's not peculiar for a party
to make known its objection at the time when the
statement is sought to be tendered.

15 THE COURT: Listen to the question I ask you, I said if you gave
notice?

MR. CAVE: Well I did say My Lord, I did not, please forgive me.

THE COURT: Am just wondering whether this is the right moment
to be raising this. This witness...you've indicated
20 that you want to challenge...you're now indicating
that you want to challenge the authenticity of the
document?

5 MR. CAVE: No My Lord, I don't think from the point of view, what we say under the Electronic Evidence Act it ought not to be admitted, this is not a challenge to---

THE COURT: Mr. Cave, emails are routinely admitted into these courts.

10 MR. CAVE: My Lord, I do recall Your Lordship, saying something recently that if indeed the issue is not arisen or is not disputed then it's no need to decide it. It may very well be that other persons have not---

15 THE COURT: I am just wondering whether now you've indicated your objection whether Mr. Williams might want to seek to lay the foundation.

20 MR. CAVE: Well My Lord, this is what we say and I am glad the Court raise that point. The first point I want to make is that the time for him to do that have passed already because he has already made the application and he's already at the point where he wishes to tender the document, but in any event we say My Lord, that

5 this witness cannot supply the direct information or
evidence which the court will have been required---

THE COURT: So Mr. Williams shouldn't be given the chance?

MR. CAVE: Well My Lord, it's not about being given a chance,
Mr. Williams has gotten the chance already in
10 preparing this witness statement and seeking to
introduce this before the court, as a matter of fact the
court has pointed out that these witnesses
statements...there was a Case Management Order,
these witness statements were filed pursuant to the
15 Case Management Order and we're now at a point
some considerable point afterwards where the
witness has now come to the witness box and the
witness says I am prepare to tender my witness
statement as part of the evidence, along with an
20 exhibit which we dispute.

And we say that it's not a matter of my learned senior
not having a chance. My learned senior has had a

5 considerable opportunity already to put this evidence
before the court but even if---

THE COURT: He has put it before the court.

MR. CAVE: Yes, yes, not the evidence---

10 THE COURT: Look, look, are we wasting time here? Listen
when...if Mr. Herskowitz comes and gives evidence
the witness is going to be able to put this document
to him.

MR. CAVE: If the witness---

15 THE COURT: If Mr. Herskowitz comes and gives evidence, he'll be
cross examine on this document.

MR. CAVE: I appreciate that My Lord, and I fully expect that he
would be if he comes and gives evidence. We say
however---

20 THE COURT: And it's right and proper that this witness who is here
since he is seeking to admit it now be given an
opportunity to deal with...because you can call him
back later---

5 MR. CAVE: Except My Lord, and this where...this is the point I want to bring home as to why---

THE COURT: Let's not...I'm not shutting you out, I'm just wondering whether we're just wasting time now and really and truly let's hear what Mr. Williams has to say
10 and how he intends to proceed.

MR. CAVE: Guided My Lord.

MR. WILLIAMS: Oblige My Lord, My Lord, it's a bit regrettable that we have to come to this point but recall the Case Management Orders in relation to the admission of
15 witness statements as examination in chief and just for background purposes that my former colleague on the other side we had both agreed that whatever comes with the witness statements---

THE COURT: But don't worry with that, let's deal with the situation
20 here at the moment.

MR. WILLIAMS: In terms of this particular situation, first of all and the fact is that about every document in this trial is really the product of electronic records.

5 THE COURT: Yeah, but there's an objection to this particular one.

MR. WILLIAMS: Yeah, I am just making the general observation the
rule about this kind of objection is clear and I have
had to deal with it many times before these courts
and it requires that in relation to notice to prove
document that a party is deem to admit authenticity
10 of any document, disclose any document, not
electronic or other, any document disclosed to him
under this part, unless that party serve notice that the
document must be proved at trial.

15 There has never been any notice requiring proof of
the authenticity of this document at trial, no
notification and in any event because this rule exists
so that there is no ambush so that parties can infact
then make the necessary preparation and if my friend
20 is saying the Electronic Evidence Act applies which I
doubt, I don't necessarily agree with that because
this is not in that nature of what the Act purports to
address in terms of electronics, this is simply a
printed document and its outside the scope of that

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Act but if it was the intention to be able to object to this document and notice to prove must be served not less than 42 days before the trial and of course we've have a lot of time for that and if my friend then say okay we intend to do that, then he is obliged. It must be, it is mandatory that he gives that notice 42 days at least before the trial so that one can at the time of trial having been notified that there will be an objection to the particular once you get that notice the you could take the appropriate steps let's say that you assume there's a foundation necessary to be laid or my friend...to be able to do it appropriately---

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THE COURT: Is there any inconsistency between the Rules and this Act.

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MR. WILLIAMS: There's no inconsistency between the Rule and the Act. I will come shortly by going to the Act...going to the Statute itself where it says the general rule and so on.

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But there not having been any evidence or any notification except to whisper in our exchanges earlier today, certainly not in compliance and this is mandatory and if this is not done the objection can't be taken, that is the clear position just like objections having to do with witness statements and so on if you don't provide your witness statements and so on, you're are oblige to give notice.

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So, it is certainly a fundamental issue and there's no clash with statute and my friend has certainly had every opportunity to make the objection that the Civil Procedure Rules mandates.

Now, if the matter one that is govern by Electronic Evidence Act. The Electronic Evidence Act Section 4 speaks to its scope, it says –

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“This Act does not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication.”

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So the standard and general rules of evidence and so on applies, when it comes to authentication this...there's a modification. When it comes to authentication the rules of court also tells you what is that modification; the rules of court that's 28.18 which requires any document, it doesn't categorize them as electronic, non-electronic, whether they are pictures and so on.

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Any document shall be deemed to be the...the authenticity of it shall be deemed to be accepted it need to be an admission. The party shall be deemed to admit the authenticity of any document disclosed to him unless the party give the notice that the document must be proved at trial.

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A notice to prove a document must be served not less than 42 days and this is hardly the case here and so I have certainly and respectfully say to the court that in terms of this document that infact my

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friend can only take any objection if he can show that he is within 28.18 and he's certainly not within 28.18. and he had every opportunity to put himself there and he's not there.

MR. CAVE:

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My Lord, and I did note respectfully that my learned senior never address the issue of the prelininent nature of this particular legislation, and Your Lordship did rightfully put the finger on the issue which is whether is any conflict between the particular Procedure Rules and this piece of legislation. My Lord, I much grateful that my learned senior pointed to paragraph 4 the Scope of the Act in which the Act specifically denies any modification of common law or statutory rules relating to the admissibility of records, except importantly rules relating to authentication and best evidence. The very next section, Section 5 the marginal note reads "authentication" and that Section specifically provides for the procedure by which and the burden which must be overcome in order for a person who

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seeks to introduce an electronic record to meet before that person is allowed to admit evidence of that sought.

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That is a position we rely on My Lord, and I want to day further that any evidence which purports to supply evidence of authenticity or evidence capable of supporting a finding that the electronic record is what the person claims it to be; it can't come from this witness because he can't supply any direct evidence of it, any evidence he would supply must come from a third party and that is inadmissible hearsay.

15

So I hope that addresses the point of whether my learned senior ought to be given an opportunity to have the evidence tendered establish though this witness.

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We say he is not in a position to do so, whatever opportunity is afforded to him that what he is supposed to do I propose is seek to introduce indirect

5 evidence of a third party which he cannot do. Those
are our submissions My Lord.

MR. WILLIAMS: My Lord, can I make one observation here. This
Electronic Evidence Act January 2003, deserves in
terms of matters of authenticity that was expressed.
10 The 2005 Civil Procedure Rules in terms of
authenticity and the Rules are not just procedural but
substantive in nature which came after this Act and
there's not conflict between the Act and the Rule
mandates a certain process which my friend has not
15 followed. If we reverse it the other way---

THE COURT: Mr. Williams, I'll give you an opportunity, you
proceed. I will overrule the application at this stage.

MR. WILLIAMS: Oblige My Lord.

THE COURT: And you got an opportunity to proceed to seek to
20 introduce the email.

MR. WILLIAMS: Is My Lord, saying I can bring---

THE COURT: You can proceed.

5 MR. WILLIAMS: I can proceed and have the entire thing be introduce.

THE COURT: You can seek to get it introduce.

MR. WILLIAMS: Okay, because I was about to say to my learned that
if the objection was taken the way it properly should--
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10 THE COURT: I think it's premature, I think---

MR. WILLIAMS: I could bring the particular person.

THE COURT: He is obviously confident that you can't succeed, but
can't deny you the opportunity to attempt to do so.

15 MR. WILLIAMS: And I can also bring that person if that's...yes, it
would be a new witness statement.

THE COURT: The problem you see is that the other side is actually
ambushing---

MR. WILLIAMS: Ambushing, that's what it is.

20 THE COURT: That's the difficulty, That's the problem with his
argument because the Rules seeks to establish a

5 procedure by which there should be a challenge to
the admissibility of any documents under the Act.

MR. WILLIAMS: Any document.

THE COURT: In so far as the Rules are inconsistent with the Act,
then obviously the Act would take precedence. But
10 in so far as it is not inconsistent then it will---

MR. WILLIAMS: It will operate.

THE COURT: Yeah. You can proceed, you still got this witness in
chief, so you can proceed.

MR. WILLIAMS: Grateful, My Lord, the next step would have been to
15 admit the witness statement and the exhibits
attached.

EXAMINATION IN CHIEF CON'T OF JOHN USHER BY MR. WILLIAMS

Q. Would you like to give this to the court?

THE COURT: There is a challenge to this email, is there anything
20 you wanted the witness to address in relation to that?

MR. WILLIAMS: In relation to the email?

5 THE COURT: A challenge, yeah.

MR. WILLIAMS: To enquire of him in relation?

THE COURT: Yeah.

MR. WILLIAMS: Well his evidence in relation to that email is in
paragraph 56 really of his witness statement. My
10 Lord, you mean by way of amplification?

THE COURT: Yeah.

MR. WILLIAMS: Very well My Lord.

Q. You recall that you referred to...in paragraph 56 of your witness
statement you referred to this email between Kathy Ellis and...sent by
15 Mr. Herskowitz to Kathy Ellis, did you also received the email?

A. I was 'cc' into it, I was copied into it.

Q. You were copied into it?

A. I was copied into it yes, by Kathy.

MR. CAVE: My Lord, I just want to clarify what his answer is,
20 whether he was---

THE COURT: He was 'cc' into it by...it is email by Kathy.

5 MR. CAVE: By Kathy, not the person who supposedly sent it.

WITNESS: Kathy Ellis.

Q. This email, you had the opportunity to read that email?

A. Yes sir.

10 Q. When you got that email, can you tell this court if you shared it with others?

A. I did not share very much, I show told the wife and showed then more-

Q. Did you shared it with your colleagues in the company?

15 A. I showed them, I showed Alfonso and couple other people that work with us.

Q. In relation to that email Mr. Usher, the person to whom it was address Kathy Ellis, do you know her?

A. I know her.

20 Q. In relation to this dispute between the Claimants and the Defendants, do you know whether Kathy Ellis took side in this issue?

A. No, I don't really follow the sides, so I don't know.

5 Q. In the email and by way of amplification, certain things were said referring to you, you are aware of it?

A. Yes.

Q. There was a question challenging your qualification to do this project...to ran this project?

10 A. That's correct.

THE COURT: Just a second---

MR. CAVE: My Lord, we go into the contents of the email?

THE COURT: This is really to deal with the object is it?

MR. WILLIAMS: My Lord.

15 THE COURT: You just start with the objection, you finish dealing with the objection?

MR. WILLIAMS: Yes My Lord.

THE COURT: Alright---

MR. WILLIAMS: And I thought I was given the opportunity just to
20 amplify with regards to---

5 THE COURT: To do with the objections specifically right now. You wanted to deal with amplification fully right?

MR. WILLIAMS: I'm sorry I didn't realize My Lord, I was focused on the---

THE COURT: Yeah, because of the lack of notice—

10 MR. WILLIAMS: I understand what My Lord, my junior has just brought me home to what the judge was expecting.

THE COURT: Yeah.

Q. When you received this email, did you do anything to it, to add to it?

A. I did not.

15 Q. Did you print it?

A. I think I printed it out yes.

Q. Did you forward it to anyone, and if you did can you tell us who you recall sending it to?

A. I don't remember who I sent it to, I might have sent it to the Marketing
20 group but I am not sure, I don't remember.

Q. Did you bring it to the attention of your Lawyers?

5 A. I definitely brought it to your attention.

Q. And you sent it to your Lawyers?

A. Yes I did.

Q. Do you recall if in relation to this email whether Mr. Herskowitz said anything to you?

10 A. He said nothing to me.

Q. So he had no conversation with you concerning the email?

A. No.

MR. WILLIAMS: Okay, that's as much as I will ask Mr. Usher in relation of finding the email.

15 **CROSS EXAMINATION OF JOHN USHER BY MR. CAVE**

Q. Mr. Usher, you said you didn't alter or modify that email in anyway before you sent it that was your evidence?

A. That's correct.

Q. But you can't say whether it was altered or modified before it was sent to you, can you?

20

5 A. No, I just got what I got, I am not an expert in that Sir.

Q. You have forwarded message before haven't you?

A. Many a times.

Q. And you are fully aware that if one forward a message...an email it allows for the person to change all of the properties in the email which is being forwarded including the contents, date, subject, every aspect of it, you are aware of that?

A. I am very challenge with computer, you might---

Q. So you can speak to whether an email...that email is authentic or not, is that correct?

15 A. I just know that it came---

Q. It came from a person?

A. Yes.

Q. Who sent it to you, or it was sent by somebody else?

A. Kathy Ellis sent it to me and that's what I got.

20 Q. But you can't speak to the authenticity of the record?

5 A. I can only assume it was, I really can't.

Q. You can't say if it was altered or not?

A. I cannot.

MR. CAVE: Those are my questions My Lord.

THE COURT: Do you want to say anything now?

10 MR. CAVE: My Lord, consistent with the evidence that this
witness...this is the basis of my objection which I
repeat and rely on that this witness can't assist this
court in overcoming the hurdle which they are
required to overcome pursuant to Section 5 of the
15 Electronic Evidence Act, Chapter 95:01, that is the
basis of my objection and I making that now.

MR. WILLIAMS: Well My Lord, I say that the particular statute my
friend is citing does not present any conflict or
obstacle in relation to either the admissibility or on
20 the authenticity. What the rules ultimately do, the
CPR 28.10 or 28.18 is to amplify the process
consistent with the new climate of no ambushing and

5 set a clear procedure which is mandatory that if my friend fail to follow that procedure is deem to admit the authenticity of that document which they have been aware of since witness statements exchange.

10 The rationale behind the process My Lord, is to allow, is to avoid this kind of thing here at trial the whole ambush and it would have been very simple with the objection---

THE COURT: Mr. Williams, I will admit the document for purposes of identification.

15 MR. WILLIAMS: Yes My Lord.

THE COURT: And give a ruling on its authenticity at the end of the case.

MR. WILLIAMS: Very well My Lord.

20 THE COURT: So it's admitted for the purposes of identification, cross examination of all the witnesses and then at the end of the day I'll rule on its admissibility and its weight.

5 MR. WILLIAMS: Very well My Lord, is this a convenient time.

THE COURT: We'll adjourn and come back at 9 o'clock tomorrow.

Court adjourned at 1:05 p.m.

From Article at GetOutOfDebt.org

5 **February 22nd, 2017**

9:06am.

MARSHALL: Claim No. 131 of 2016.

THE COURT: Yes, appearances?

MR. WILLIAMS: If it pleases you, My Lord, the appearances are the same as the
10 records indicated from yesterday. I believe Mr. Usher was sworn
and his statement is in and he will now be -- so I leave him in
your hands, my friend.

THE COURT: I didn't formally admit the evidence, did I?

MR. WILLIAMS: I don't have it as --

15 THE COURT: We were dealing with preliminaries.

MR. WILLIAMS: What you said it would be i.d the email.

THE COURT: For identification purposes.

MR. WILLIAMS: Yes but I don't think you had formally went onto admit the
witness statements and the other exhibits. Mr. Usher that is your
20 witness statement which you identified yesterday?

MR. USHER: Mhmm.

5 MR. WILLIAMS: Would you like now to put it into evidence along with the exhibits included the ided document?

MR. USHER: Yes.

THE COURT: It is admitted as examination in chief subject to the exhibit-- what's the number?

10 MR. WILLIAMS: JU-1, tab P

THE COURT: "A" for identification purposes.

MR. WILLIAMS: Mr. Usher, my friend will ask you some questions. You must speak up and address yourself and remember the mic is not an amplifier so you would have to speak up.

15 **CROSS EXAMIANTION OF MR. JOHN USHER BY YOHANCEH CAVE**

Q: Mr. Usher if for some reason you don't understand the question I asked could you just indicate to me so that I can clarify it.

A: Yes, sir.

Q: You gave evidence in your witness statement that Sittee River Wild Life Reserve
20 is a non-profit incorporate in Belize, is that correct?

A: That is correct.

5 Q: This company was in fact form in 2003, isn't that correct?

A: I think so.

Q: Do you know who the original subscribers to the memorandum were when that company was form?

A: I know a few of them that I can remember off the top of my head.

10 Q: Perhaps I can help with your memory. Is Peter Baker one of them?

A: That is correct.

Q: You would have heard the testimony yesterday from Mr. Kazazi yesterday that Peter Baker is in fact the owner of Global Property Alliance, isn't that correct?

15 A: I heard that, yes.

Q: Colin Medhurst.

A: Yes that is one of them.

Q: Do you know of any relationship between Colin Medhurst and Mr. Baker?

A: Yes.

20 Q: That is his step father, isn't it?

5 A: That is correct.

Q: Joan Medhurst that was another subscriber.

THE COURT: Sorry, who is whose step father?

MR. CAVE: Colin Medhurst is Peter Baker's stepfather.

Q: June Medhurst is another of the subscribers was in fact Peter Baker's mother. Is
10 that correct?

A: That is correct.

Q: Another subscriber is Andris Pukke, isn't that correct?

A: That is correct.

Q: The only other subscriber apart from those names already was of course Valerie
15 Woods.

A: That's correct.

Q: Now, you spent some time indicating in your witness statement or giving
evidence in your witness statement as to the general concept of
the project. This was of course a non-profit and you would agree
20 with me that that meant that those persons who are members or

5 Q: You began to promote and sell this project as a project where a person could acquire residential property within its boundary, the boundaries of Sanctuary in Belize?

A: That is correct.

Q: It was marketed as a non-profit, isn't that correct?

10 A: Could you ask that question again, kindly?

Q: The project was marketed to prospected buyers as a non-profit, meaning the company that controlled the project, Sittee River Wildlife Reserve, was described in your marketing as an non-profit company, isn't that correct?

15 A: Sittee Rover was described as a not for profit entity.

Q: Not for profit. What you essentially told prospective buyers is that if they buy residential property the net proceeds from the fill of lots within these residential areas would be used to finance common amenities and other projects within the sanctuary Belize project area. Isn't that correct?

20

A: That was the plan.

5 Q: You would agree with me therefore that there was an expectation on the parts of those prospective buyers that whatever monies in net proceeds coming from the sale of residential lots to be used to build roads, marina, developing water system, electricity system and other common amenities, right?

10 A: That's correct.

Q: Now, when did you first become involved with the Sanctuary Belize Project?

A: Somewhere around 2003 or 2004.

Q: When did you first became a member of the board of Sittee River Wildlife Reserve?

15 A: I became a member of the board probably the same time.

Q: Around the same time. So, from the very inception you were aboard member.

A: No, not from the very inception.

Q: But?

A: Close, close to the inception.

20 Q: Recently after the company was form you became a board member?

A: 2 or so years later, yeah.

5 Q: But the company was form in 2003 and you just indicated that in 2003 or 3004
you became involved, isn't that correct?

A: Somewhere around there, yes. A year or 2 after, I don't have the exact dates on
me right now.

Q: Do you recall who were the other board members at the time?

10 A; Right off the bat, no. it is recorded somewhere. I don't have the insight of that.

Q: Were there any family members of yours on the board?

A: At the time when I started, no, it was only myself. It was only the original
subscribers.

15 Q: The original subscribers and you. Later on there were board member added. Isn't
that correct?

A: That is correct.

Q: Some of them family members of yours?

A: Quite a bit of them.

Q: How many of them?

20 A: Three.

5 Q: Who were those family members?

A: My son.

Q: Your son. His name?

A: Christopher. Later on, Andrew Usher.

Q: Andrew is related to you how?

10 A: He is my son in law.

Q: Anybody else?

A: What year are you talking about?

Q: I didn't give a year. I said, they were board members later on added. You accepted
that your family members were later added.

15 A: Yes, that's correct.

Q: And I asked you who were those family members, so that was my general
question to you. Who were the other family members?

A: I had my son Christopher, Andrew--

Q: Son in law.

20 A: Yes. A couple years back I had Douglas Usher.

5 Q: Who was that person to you?

A: Cousin. Nephew I should say.

Q: Your wife was never on the board?

A: What is that?

Q: Your wife was never on the board?

10 A: Just in recent years, yes.

Q: What is your wife's name?

A: Deborah.

Q: Now, persons who purchase lots within the development automatically became members of Sittee River Wildlife Reserve. Is that correct?

15 A: They automatically became provisional members of the Sittee River Wildlife Reserve. Is that correct?

Q: They automatically became provisional members. Mr. Usher, let me put this to you that the concept of provisional membership was never part of the project or the company until 2008 when the articles were amended.

20

A: That is correct.

5 Q: When you report a provisional membership, you speak of the period after 2008?

A: That is correct.

Q: In the period before 2008, 2003 to 2008 anyone who purchase property within the reserve or within the development automatically full members. Isn't that correct?

10 A: I think that's the way it is. I am not sure.

Q: At some point, Mr. Usher, you became chairman of the board of directors, isn't that correct?

A: That is correct.

Q: You became chairman of Sittee River Wildlife Reserve in 2006.

15 A: That's correct.

Q: Now, as a director of Sittee River Wildlife Reserve and in particular a chairman. You understood the due that you owed certain responsibilities to the company of which you are a director.

A: That is correct.

20 Q: You must have understood that there ought not to have been any conflict between your personal interest and the interest of the company.

5 A: Could you repeat that?

Q: You understood as a director that there ought not to be any conflict between your personal interest and the interest of the company. Isn't that correct?

A: That's normally how it is.

10 Q: By the way how long were you chairman of the board of directors? Are you still chairman of the board of directors of Sittee River Wildlife Reserve?

A: No, sir.

Q: When did you stop being the chairman?

15 A: Somewhere in October of last year.

Q: October of 2016?

A: I think it is October, I am not sure of the exact date.

Q: You are not sure of the exact date but you think it's sometime in October of 2016 late last year?

20 A: Yes.

Q: Are you on the board of directors of Sittee River Wildlife Reserve currently?

5 A: I am only a full member. I am not a director.

Q: You are not a director.

A: I resigned as a director also.

Q: Any particular reasons why?

A: Because of all this that is happening.

10 Q: I see.

A: I had enough of it.

Q: You familiar with the company Eco Futures Belize Limited?

A: that is correct.

Q: When was that company incorporated?

15 A: I can't give you an exact date.

Q: Om the 20th day of August 2010, ring a bell?

A: Probably correct if you have it there.

Q: In fact you exhibited certificate of incorporation to your witness statement, is that
correct?

20 A: Yes.

5 THE COURT: What date is that?

MR. CAVE: The 20th day of August 2010.

Q: Who were the subscribers of that company?

A: Myself, Christopher Usher, my son and Alfonso Bailey.

Q: Who is Alfonso Bailey?

10 A: He sits in the room right behind you.

Q: He is not related to you, is he?

A: Very much a friend not blood but he is a friend.

Q: Now, at the time this company was incorporated did you-- when I had asked you
a moment ago you said you are no longer chairman of the board
15 of directors. Do you know who is chairman of the board of
directors currently?

A: I am not sure I only heard. I have not seen any of the documents recently. I think
it is Peter Baker. I am not sure.

Q: At the time that this company as established. This was your company, Eco Futures
20 Belize Limited, the one you subscribed to, had a share capital of
10 thousand shares. How were those shares held?

5 A: Excuse me?

Q: How were those shares held?

A: I had 98% of the shares.

Q: Who else had the others?

A: Christopher and Alfonso had the others.

10 Q: They had one share each?

A: Yes.

Q: They had one share each and you had the other 10 thousand. That is not quite 98% is it? This was essentially your company?

A: That is correct.

15 Q: Who came up with the idea of setting up this company?

A: I did along with the board.

Q: Who were the members of the board of directors?

A: The ones we mentioned just now.

Q: So the board of directors of Eco Futures Belize Limited was yourself, Alfonso
20 Bailey and your son Christopher Usher.

5 A: Yes, that's right.

Q: Now, in relation to Sanctuary Belize Project, you had many responsibilities related to marketing, planning, construction, etc. Is that correct?

A: That is correct.

10 Q: At some point a decision was made to turn over some of those responsibilities to another company. Isn't that correct?

A: That is correct.

Q: Now, was this discussed at the board level at Sittee River Wildlife Reserve?

A: Yep.

Q: When was it discussed?

15 A: I don't know the date.

Q: You don't know the date. Do you know the persons that were present when this was discussed?

A: We had a quorum. I don't really remember who all was there.

20 Q: You had a quorum. Well in 2010 you made decision that is Sittee River Wildlife Reserve, to enter into a development agreement, a development

5 of marketing agreement with an outside company. Isn't that correct?

A: That is correct.

Q: How did you decide or what consideration went in to choosing that company?

You were chairman of the board at this time, right?

10 A: That's right.

Q: What considerations went in to choosing that company?

A: Well they were one of the founding members there that had some experience which was Peter and Mr. Medhurst had some experience in the whole operation so we picked that group. It was based on that.

15 Q: So one of the founding members, Peter Baker and his step father--

A: His step father advised. He was not a member of the company but he was an advisor on how to.

Q: Advised that?

A: On their-- I am talking about GPA.

20 Q: I don't think you understood my question.

A: Maybe I didn't understand you.

5 Q: That's okay. I have no problem repeating. I am referring to a decision made by
Sittee River Wildlife Reserve the company of which you were
chairman of the board. At some point the company made a
decision to choose an outside entity to assess with marketing and
development of the project. You understand that?

10 A: Very clearly.

Q: I asked you what considerations went in to choosing a particular company.

A: Their ability to sell, to market and the group that they had put together look like
they were doing what we needed to do.

15 Q: Mr. Usher, I assumed after what you said to me was in relation to the
consideration that went in to choosing or entering into an
agreement with GPA, Global Property Alliance.

A: Marketing.

20 Q: Sittee River Wildlife Reserve never entered into any developments, into any
marketing projects, any marketing agreement with Global
Property Alliance.

A: No, they didn't.

Q: So it is not correct that you just said?

5 A: Then I stand corrected.

Q: You stand corrected. Well, I will be very specific with you, a development project agreement.

A: That's what I was referring to.

Q: Yeah? Separate and apart from the agreement that was entered into with the GPA-

10 -

A: Well I got confused and I should have asked you, sorry about that.

Q: In fact Sittee River Wildlife Reserve entered into an agreement with Eco Futures Belize Limited on the 21st day of August 2010.

A: Correct.

15 Q: This was the day after the company was incorporated. Isn't that correct?

A: That is correct.

Q: You were chairman of the board of Sittee River Wildlife Reserve as well as the owner and a director of Eco Futures Belize Limited. Isn't that correct?

20 A: That's correct.

THE COURT: What date was that?

5 MR. CAVE: The agreement was dated the 21st day of August, 2010 between Sittee
River Wildlife Reserve and Eco Futures Belize Limited.

Q: What was the purpose of that agreement?

A: The agreement is in here but its purpose was to become the development company
to take on the for profit form of the Sittee River Wildlife Reserve.

10 The reserve needed an arm that would do the development itself
and so we got into that.

Q: What consideration went into choosing Eco Futures Belize limited as oppose to
some other company?

15 A: We didn't have any other companies at the time. We form the company and do it
ourselves.

Q: You said, we didn't have any other company. We do it ourselves. Who the
"we" you are referring to?

A: Well the same company that we just mentioned just now.

20 Q: You said Sittee River Wildlife Reserve did not have any other company so when
you referring to "we" I want to clarify what you mean by "we". I
ask you to wear the hat of Sittee River Wildlife Reserve as the
chairman of the board of directors. I ask you to wear that hat. You

5 are considering handing over the development to another company. You said a moment ago “we”. “We didn’t have any other company so we formed a company”. Who is the “we” you are referring to?

A: I will ask you to repeat because I got lost up there. Let me go over.

10 Q: At some point you must have considered handing over the development responsibilities to another company. Is that right?

A: Yes.

Q: By you I mean--

15 THE COURT: Do apologize. I see someone is here for the matter for 10 o clock. Do excuse me. Was there no consultation about this?

MR. WILLIAMS: Yes, I was brief just before coming to court and Mr. Ebanks inform me that the two banks they were instructed that they would agree to the adjournment and we are trying to get a date. However, I made to understand that the claimant had texted t his morning indicating that they weren’t amenable to the adjournment. So I guess that may be the reason. In other words

20

5 we certainly tried to make the arrangements but were only told
this morning.

THE COURT: Could I interrupt. Let's discuss this in chambers. Excuse me a minute.

(Court adjourned for 10 minutes.)

(Court continues at 9:55 am.)

10 MARSHALL: All rise in court, the honourable Justice Abel.

CROSS EXAMINATION OF MR. JOHN USHER CONTINUES

Q: Mr. Usher, just let me remind you, before we had the interruption, you did not
have any other company. I was trying to clarify because you used
the word "we" and think you already testified that you were
15 simultaneously sitting on the board of Sittee River Wildlife
Reserve and also a director and the owner of the company, Eco
Futures Belize Limited. Is that correct?

A: That's correct.

Q: So when you say "we" I am just asking you to clarify which entity you are
20 referring to. Is it Sittee River Wildlife Reserve for which you
were chairman on board or was it the other company of which
you were owner.

5 A: Can I just clarify something?

Q: I want you to answer my question which I asked you. I am trying to clarify something you said so that should be clear to you. I want an answer to that. When you say “we” what are you referring to?

A: Sittee River Wildlife Reserve.

10 Q: Now, Sittee River Wildlife Reserve, for which you are chairman of the board, had to decide which company to choose to assist with its development project. What I asked you is what considerations went in to choosing your company as to some other company?

A: Well, our company had the experience of developing for of the years that we have
15 done before. One of the main group we have in there that had the experience of doing what the development need to do so that was the main consideration. It was a captive group of people.

Q: A captive group of people, what do you mean by that?

A: Well, we had a captive pool of engineers and stuff like that in the pool that were
20 running the business.

5 Q: Mr. Usher, this was a company that was being form the very day before the agreement was signed. How much engineers employed that this company has?

A: It is the same group of people that were working on the development that they were using to do the work for Eco Futures.

10 Q: Let me get your answer clear. On the date, 21st day of August 2010, when Eco Futures Belize Limited, your company, entered into an agreement with Sittee River Wildlife Reserve, you are saying that having being form a day before you had already employed people contracted other people to access with the development project?

15 A: We just took on the folks that were working with the other company.

Q: I assume on the day when this company was incorporated you did so, the 20th the day before the agreement?

A: We did it when we had to do it.

Q: I am asking if it was the day before the agreement you took on these persons.

20 A: We were planning this company before it was even form so it was just how it was.

5 Q: Again, when you say we were planning this company before it was even form, I want you to clarify who are the “we” you are referring to.

A: It is in conjunction with Sittee River Wildlife Reserve and the new corporation that we are forming. That was what we were doing.

10 Q: Let me be clear, Mr. Usher, a company doesn’t decide. Its members, its directors decide. Who were the persons who met and considered and decided? That is what I am asking you. Of Sittee River Wildlife Reserve, who were the persons who met, considered and decided?

A: The board.

15 Q: You can’t say when that happened, can you?

A: I can’t remember.

Q: I take it you also can’t remember who are the board members who discussed this?

A: I mentioned that early, exactly who they were.

20 Q: You can’t remember a single person present during the discussions among the board of Sittee River Wildlife Reserve before when you had met and considered this agreement?

5 A: Yes, I had Alfonso there with me. I don't remember who else.

Q: How many directors were on the board of directors in 2010?

A: I don't remember exactly.

Q: You don't remember exactly. Let me refresh your memory. Would it be true to
say that you filed with the registrar of companies on the 7th day
10 of June 2010 a list of directors, naming yourself John Usher as
chairperson--

THE COURT: No, no, just answer the questions.

Q: You should tell me if this is correct or not. You filed a list, a company with the
registrar of companies, a register of directors with Sittee River
15 Wildlife Reserve, naming yourself John Usher as chairperson,
Luke Chadwick a business person, Christopher Usher, Michael
Duncan, Alfonso Bailey, Santiago Quan, Andrew Usher, Mark
Romeo--

THE COURT: We need to get answers for the record.

20 Mr. Cave: Was there a particular point?

THE COURT: You were going through a whole list. He was just-- but it doesn't
register in terms of the record.

5 Q: From that list of directors you were listed as chair person. Is that correct?

A: That is correct.

Q: Luke Chadwick was also listed?

A: Yes.

Q: Would it be helpful to you if you had a look at it?

10 A: It was probably there if you say. You are asking me to answer a question I can't remember.

Q: It was filed.

A: It was filed but I can't remember the names of the people right off hand.

Q: You don't remember if Luke Chadwick was on the board in 2010?

15 A: Well on that date, I am not sure but he was on the board at some point.

Q: Christopher Usher, this is your son. You don't remember if he was on the board in 2010?

A: I don't remember if he was on there. He was on the board for a while. Luke was on the board for a while. The names you called out were on the board but for the specific year, I can't tell you for sure. I don't remember.

20

5 Q: The only person you remember of all the directors on the board was yourself and
Mr. Bailey?

A: Yes, because he had been on the board all the time. He has been on the board
from the inception so.

10 Q: And therefore he is the person you remember meeting with to consider the
development contract?

A: That I remember right now, I can't remember exactly who were there, you know.

Q: Do you know who was the person that signed this contract on behalf of Sittee
River Wildlife Reserve?

15 A: I don't remember right off but it should be in there. I know that I was a signatory
to it.

Q: You were a signatory? Do you know who had signed on behalf of Eco Futures
Belize Limited?

A: Either Alfonso or Christopher. I am not sure.

Q: This agreement is attached to your witness statement--

20 MR. CAVE: It is at tab17, My Lord. My Lord, I simply ask for him to be shown a
copy of that development agreement?

5 THE COURT: Yes.

Q: Do you have it here with you?

A: Yes, I do.

Q: I want you to turn to page 4 of that agreement.

A: Okay.

10 Q: I quoted to you that the person signing on behalf of Sittee River Wildlife Reserve
or the persons are Christopher Usher and Alfonso Bailey as well.

A: That is correct.

Q: I further suggest to you that the person signing on behalf of Eco Futures Belize
Limited, your company, was the same Christopher Usher and
15 Alfonso Bailey.

A: That is correct.

Q: You see there that they are described as directors for both companies. Is that
correct?

A: That's correct.

20 Q: Christopher Usher and Alfonso Bailey were also shareholders of your company
at that time. Isn't that correct?

5 A: Eco Futures Belize Limited.

Q: Yes, Eco Futures Belize Limited, your company, they were also shareholders of your company at the very same time. Isn't that correct?

A: That's correct.

10 Q: Now, would you agree that as a result of this agreement that they were considerable rights vested in Eco Futures Belize Limited, your company, that as a result of this agreement they were considerable rights vested by Sittee River Wildlife Reserve in your company, Eco Futures Belize Limited?

A: (in audible)

15 Q: Clause one of that agreement, if Eco Futures, this is your company, shall exclusively identify, design, plan, construct and develop residential community in the area, in special development areas and the nature conservation reserve. In any manner if even commercially buyable as approve by the government of Belize,
20 National Environmental Assessment Committee as not compromising to the reserve and see on a schedule Eco Futures exclusively determines or protects the value of the project for all parties concerned.

5 A: That is correct.

Q: Clause 4, Eco Futures shall have the exclusive right to contract the third parties in the US and abroad for the marketing, sale, customer management, payment processing and collecting of fund for Sanctuary Belize. Correct?

10 A: That is correct.

Q: Clause 5, Sittee River Wild life Reserve hereby grants to Eco Futures a license to enter upon and occupy the property at anytime and for any period of time and to do all thing there on for the purpose of marketing and carrying out the Sanctuary Belize project and performing its obligations hereunder including without limitations creating profit bear from as if the property were their own.

A: That's what the agreement was.

Q: Yes. Clause 10, Sittee River Wildlife Reserve agrees that Eco Futures shall have the exclusive right be guided when and where and how to deploy the capital derive from their sales receivables based on their experience and best interest and value and the development and reserve.

5 A: That is correct.

Q: Mr. Usher, my suggestion to you is that pursuant to this agreement, Eco Futures Belize Limited, your company, took full and exclusive control of the project. That is my suggestion to you.

A: Is that a question?

10 Q: Sorry, if I put a suggestion to you it is for the purpose to determine what your response is, you can agree with me or you can disagree. Let me ask you again. I was suggesting to you but maybe I can ask it like a question. If Eco Futures Belize Limited did not take full and exclusive control of the project as a result of this agreement?

15 A: That's how it is spelt out.

Q: How it is structured?

A: Yeah. How it is structured.

Q: Let me ask you. What decision making powers remains vested in the board of Sittee River Wildlife Reserve having regard to the terms of this
20 agreement?

A: Forgive me, I don't hear that well.

5 Q: I can speak as loud as you want. What decision making powers remains vested in the board of Sittee River Wildlife Reserve having regard to your rights vested in Eco Future Belize Limited as a result of this agreement.

10 A: They have full control based on the EIA of this project. It is govern by the laws of the environmental impact assessments. It is spelt out in there. So that is the power that Sittee River has. They have the ability to stare it based on the EIA. It is govern by the EIA, the Environmental Impact Assessments and the rules that follow behind that, all the permits and stuff are in, not in Eco Futures they are in Sittee River Wildlife Reserve so that is the power that they have. They are not the developers.

15 Q: I want you to look at clause 3; Eco Futures shall prepare and attain all governmental approvals and environmental clearances including without invitation environmental impact assessments.

20 A: Yes.

Q: You still saying that power remains vested in Sittee River--

5 A: Those permits were gotten in Sittee River Wildlife Reserve's name. Eco Futures procures the permits for Sittee River. All of them are in Sittee River.

Q: I am not sure you fully grasp what I was asking so I will ask it again.

A: Please.

10 Q: I already got to the considerable powers and discretion vested in Eco Futures Belize Limited as a result of this agreement. I am asking you what was the board of Sittee River Wildlife Reserve left to decide? Exclusively this company was to do marketing or to contract other persons to do marketing, is that correct?

15 A: That's correct.

Q: Exclusively this company was supposed to determine development plan. Isn't that correct?

A: That's correct.

Q: To determine it in a way that it deem commercially buyable, isn't that correct?

20 A: That's correct.

Q: At a pace that was within its discretion. Isn't that correct?

5 A: That is correct.

Q: So I am asking you, what was the board of Sittee River Wildlife Reserve left o
decide? You were the chairman of the board. What were the
powers that remained vested in you?

THE COURT: Ask him separate questions.

10 MR. CAVE: Sorry, when I said you I meant the board. I should clarify that.

Q: What were the powers that remained vested in the board?

A: The board's power is to make sure that Eco Futures follows. They have the power
to change if they want to.

Q: To change what?

15 A: To change the contract if they don't fulfil the obligations that they have.

Q: So even though the discretion was that Eco Futures to identify development plans
on the various stages of the project on a schedule it deemed
commercially marketable and buyable, you say there was
mechanism for Sittee River Wildlife Reserve to determine
whether they were performing their obligations?

20

A: I would like to think so.

5 Q: Mr. Usher, isn't it true that under this contract, in effect you were determining what our obligations were? Isn't that correct? You were determining how to develop, what to develop and at what pace to develop. Isn't that correct? That was complete within your discretion.

10 THE COURT: How many questions you asking?

MR. CAVE: Sorry, forgive me, My Lord.

Q: You were, that is Eco Futures Belize Limited, was responsible for determining what to develop, when to develop and at what pace to develop?

THE COURT: One at a time, please.

15 Q: Under this agreement you had a discretion that, is Eco Futures Belize limited had discretion in deciding when to develop the project?

A: That is correct.

Q: You had the power to determine how to develop the project?

A: (in audible)

20 Q: So you agree?

A: I agree.

5 Q: You had the powers on this agreement to determine what plan was commercially marketable or viable and what plan was not commercially marketable or viable?

A: They were plans.

10 Q: You had the power to determine what plans were commercially marketable and viable and what plan was not commercially marketable or viable?

A: That's correct.

15 Q: When you included this clause 4, were you thinking that at some point you were going to grant to somebody in the United States exclusive rights to sell, market, engaged in payment practices, etc. Did you at the time intend that, that was what you were going to do?

A: It was discussed. I am not the one person that makes the decision so it is the board.

Q: I think you anticipated what I was asking. It was discussed by whom?

A: The board.

20 Q: Who were the members of the board who discussed this, yourself and Alfonso Bailey?

A: And the board members that were there.

5 Q: And the board members that were there. You mean the ones that you can't remember?

A: Well, you refreshed my memory just now but I already dismissed the memory because I thought that had gone by.

10 Q: I am not hearing you and I am sure Your Lordship is not hearing you either. You were mumbling something at the end of your sentence. I did not hear what you were saying. Please forgive me.

A: I forgot what I said just now, sorry.

15 Q: You forgot what you said. Mr. Usher, on the 31st day of June, 2011, Eco Futures Belize Limited, your company for the avoidance of doubt, entered into a sale and marketing agreement with Global Property Alliance Incorporated.

A: Yes.

Q: Is that correct?

A: I think the dates are right.

20 Q: Global Property Alliance would be a California based corporation owned by Peter Baker.

5 A: That is correct.

Q: This is the same Peter Baker who was one of the original subscribers to Sittee River Wildlife Reserve and who is now chairman of the board of Sittee River Wildlife Reserve.

A: Correct.

10 Q: You had said early when you were confused between what agreement I was referring to whether the development agreement between Sittee River Wildlife Reserve and yourself and this agreement between Eco Futures and GPA. You said that Peter Baker and Colin Medhurst, his father in law, had advised in relation, give advice
15 in relation to entering into the agreement. Yes?

A: Yes.

Q: I clarified that it couldn't have been the agreement that was entered into between Sittee River and Eco Futures Belize limited so you must have been referring to the agreement between Eco Futures Belize
20 limited and GPA. Isn't that correct?

A: That's correct.

5 Q: So in other words you are saying that Peter Baker and Colin Medhurst advised
you that your company Eco Futures Belize Limited should enter
into a marketing agreement with GPA.

A: I didn't say that they advise me. They were two people that knew some marketing.
They had done it before and we thought that they were full
10 members who were the original promoters so why not use
somebody that has the ability.

Q: Well, under this agreement this was not only an agreement to market. Under this
agreement, all monies generated from the sale of lots were paid
into an account controlled by GPA. Isn't that correct?

15 A: Mhmm.

Q: So they both marketed and collected the money?

A: That was part of the agreement.

Q: Well, I see here in clause 4 of that agreement, your provision to compensation.
Isn't it? Would you like to have a look at it? It is attached to your
20 witness statement.

MR. CAVE: May the witness be shown the agreement?

THE COPURT: What are you showing the witness now?

5 MR. CAVE: The last exhibit.

Q: Clause 4, --marketing US 5,000.00 per month. Yes?

A: Mhmm.

Q: Payment processing which was the other service which I assumed would be provided ahs \$5,000.00 per month for processing payments and
10 receivables.

A: Correct.

Q: At Clause 5, there is an obligation of GPA to maintain separate and complete business accounting records reflecting all revenues, receipts and other income associated with Eco Futures sales and marketing and GPA shall forward it in a format equally acceptable to eco
15 Futures accounting on an annual basis detailing all of the Eco Futures income and revenues of any kind and or type associates with this agreement. Let me ask you something. Apart from these sum which were provided for under the agreement, were there
20 any other sums which you were at Eco Futures Belize Limited, were there any other sums you were opted to pay under this agreement?

5 A: Yes.

Q: What other sums?

A: Commissions and marketing. They do radio and tv and all the commercials and stuff. That is all part of the marketing.

Q: You were to pay for that?

10 A: Yup, that is part of the--

Q: So that would come under expenses?

A: Mhmm.

Q: Separate and apart from sales and marketing--

THE COURT: Sorry, did he answer that?

15 MR. CAVE: Sorry, could you speak up please. I thought he did.

A: Yes, that was part of it.

Q: Now, apart from the \$5,000.00 a month for sales and marketing. \$5,000.00 a month for payment processing and expenses being associated with the marketing, the net proceeds were to be return to Eco Futures Belize Limited?

20

5 A: Correct.

Q: Let me ask you, how much money was turned over to you? When I say you I mean Eco Futures Belize Limited pursuant to this agreement, net proceeds and how much was retained by GPA?

A: I don't have those figures.

10 Q: You don't have those figures.

A: No, I don't have them.

Q: Mr. Usher, you were in court yesterday during the testimony of Mr. Rod Kazazi, weren't you?

A: And you would have heard when I pose the question to him as to what amount of
15 money was turned over to Eco Futures Belize Limited pursuant to the agreement. Didn't you?

A: Yes, I heard.

Q: You would have heard that he failed to provide an answer as to the amount turned over.

20 A: Right.

5 Q: You would have recently anticipating that I would have been asking that question
to you this morning. Weren't you?

A: I wasn't wondering what you would ask. Sorry, I don't know what you were
going to ask.

10 Q: Well, pursuant to the agreement they were suppose to provide you with
accounting, detailed accounting.

A: Right.

THE COURT: Who is this?

MR. CAVE: GPA under clause 5 dealing with records and accounting.

Q: They were required to provide you with detailed accounting.

15 A: That is correct.

Q: Accounting records which were maintained separate and apart from their own
records. Isn't that correct?

A: That should be the way it is done.

Q: Did they do that?

20 A: We haven't gotten any accounting from them.

5 Q: You haven't gotten any accounting from them. Mr. Usher, this is accompany that was collecting essentially all the money generated by the sale of lot within the Sanctuary Belize project.

A: That is correct.

Q: Millions of US dollars. Isn't that correct?

10 A: That is correct.

Q: Those proceeds were to be turned over to you in order for you to assist with the development projects. Isn't that correct?

A: That's correct.

Q: In order to further development project. Is that correct?

15 A: That is correct.

Q: And you are saying they never turned over accounting as to what monies you were suppose to receive pursuant to this agreement?

A: I don't have an audited statement from them.

Q: Do you have a statement?

20 A: We have exactly what we have here. I don't have the figures. If you ask me for the figures, I don't really have it. And I was asked not to, I wanted

5 to call last night to see if I could get a figure but I was asked not to. I was given an order last night not to talk to anybody so I just didn't do that.

Q: So you don't have an estimate as to how much money you received to put into the project?

10 A: I don't do the accounting. I am not sure.

Q: I take it you don't review the accounting either.

A: From time to time.

Q: Mr. Usher, this was your company almost exclusively you own the shares. Yes?

A: that is correct.

15 Q: Payments to be receive as a result of the sale of lots, you accept were considerable payments in amount, in total?

A: Yup.

Q: What are your estimates as to the amount of payments, the amount of money received?

20 A: I don't have a figure off hand.

5 Q: Let me ask you something else about this agreement, this agreement was entered into on the 31st of June, 2011. Isn't that correct?

A: Yes.

Q: You signed this agreement, the sales and marketing agreement.

THE COURT: How many questions, which one are you asking?

10 MR. CAVE: I was referring to the sales and marketing agreement, you accept that it was entered into between Eco Futures Belize Limited and global Property Alliance on the 31st of June, 2011.

A: Right.

15 Q: My next question to you is whether you personally signed that agreement on behalf of Eco Futures Belize Limited?

A: This document we have here shows that I did not but I'm pretty sure we did.

20 Q: Are you aware that this company Global Properties Alliance Incorporated articles of incorporation were filed on the 25th day of July, 2011 almost a month after they purportedly entered into an agreement with your company?

A: No, I am not aware.

5 Q: You are not aware of what?

A: That they were separate dates.

10 Q: No, I didn't ask you that. I will repeat my question. Are you aware that Global Property Alliance Incorporated, that that company's articles of incorporation were filed on the 25th day of July, 2011 almost a month after it purportedly entered into an agreement with your company?

A: I was not aware.

Q: Well, You attached to your witness statement a tax fee, the articles of association for Global Properties Incorporated, didn't you?

15 A: Yes.

MR. CAVE: The first page of tab 16, My Lord. May the witness be shown the exhibit attached to his own statement, My Lord.

Q: You have it?

A: Yes.

20 Q: You see the date endorse and filed? It says the 25th July, 2011. Isn't that correct?

A: Yes.

5 Q: The month before you had entered into an agreement with this very same company, a marketing agreement.

A: seems so, yeah.

Q: You did so, on the advice of Mr. Peter Baker and Mr. Colin Medhurst who you say had experience in marketing, right?

10 A: Right.

Q: Sanctuary Belize, Mr. Usher was marketing by the development comprising of 14 thousand acres. Isn't that correct?

A: That is correct.

15 Q: To this day if you still continue to market that development as in the development comprising 14 thousand acres. Isn't that correct?

A: I don't know if it is being marketed right now, since October. It was marketed as plus or minus 14 thousand acres.

20 Q: You are aware however, that on the 26th day of March, 2012 Sittee River Wildlife Reserve transferred 5,600 acres of that development to Eco Futures Belize limited which you essentially own?

A: That's right.

5 Q: At the time you were and remained chairman of the board of directors.

A: That's correct.

Q: That property was transferred for consideration of \$20,000.00. Is that correct?

A: I think that is the number.

10 Q: You think that is the number. The original cost of acquisition of the 14 thousand
acres of property in 2003 would have been about 3.4 million US
dollars or 7 million BZE dollars?

A: Right.

Q: You anticipate that the property would have appreciated in the almost 9 years
from which it was acquired and when this transfer took place?

15 A: That portion is not --

Q: I don't want you to anticipate my question, you know.

A: Could you repeat it?

20 Q: Would you appreciate that in the almost 9 years between the date when the
property, the 14 thousand acres were acquired and this property
that was transfer that is the 5,600 acres to your company. This

5 property the 14 thousand acres, the property comprising the development that would have appreciated in value?

A: I would say yes.

Q: The 5,600 acres comprised approximately 40% of the development. Isn't that correct?

10 A: The total land area.

Q: That was transferred to your company by Sittee River whilst you were chairman of the board for \$20,000.00.

THE COURT: What was the quantity of the land?

MR. CAVE: 5,600 acres.

15 Q: Located within that area that 5,600 acres, were a rock coy. Isn't that correct?

A: That is correct.

Q: That rock coy existed prior to the transfer?

A: Many years before.

Q: An area of land that had the potential to produce income or had produced income before. Isn't that correct?

20

5 A: (in audible)

Q: You know what considerations went into transferring that land to your company?

A: What are you talking about?

Q: I am referring to the 5,600 acres of land, the area comprising of 5,600 acres.

A: We tried to get the best figure for the transfer so we didn't incur too much cost
10 so that is the whole rationale behind it.

Q: You tried to get the best figure for the-- I am not sure what he said.

THE COURT: For the land.

Q: So that you didn't incur any additional cost? Could you explain that please?

A: That was the least that the lands department would entertain so that is what we
15 targeted.

Q: That is the least?

A: that the lands department would entertain and that is why we targeted that figure.

Q: Who targeted that figure? When you say "we" who are you referring to?

A: Referring to the board at the time.

20 Q: The board at the time.

5 A: For both parties.

Q: For Sittee River as well as well as Eco Futures?

A: That's correct.

Q: The two boards discussed this?

A: That's correct

10 Q: You were not having a discussion with yourself, were you?

A: With the board.

Q: Well, why was it important to you to get the lowest value or the cost of the-- let
me ask this question and I want to be clear because there are two
hats you are wearing. Why was it important for Sittee River to
get the lowest cost that the Lands Department would empathy?
15 Why was that important?

A: One of the main reasons was that it reduces the tax burdens on the reserve. That
tax would be passed on to Eco Futures and it was a special
development which we had always targeted.

20 Q: Who would be liable to pay taxes under this arrangement?

A: Eco Futures would be paying the taxes at that point in time, assume all taxes.

5 Q: In relation to the transfer?

A: In relation to going forward, paying all the stuff. Eco Futures paid the transfers.

Q: You would agree with me that it would not have been the preeminent concern of
Sittee River Wildlife Reserve in so far as reducing cost were
concern that would have been your concern as the owner of Eco
10 Futures Belize Limited.

A: Could you repeat your question.

Q: It would not have been the preeminent concern of Sittee River to reduce those
cost on the tax burden because you were responsible for the cost
as the owner of Eco Futures Belize Limited.

15 A: Sittee River was responsible for that cost of paying taxes before it was transferred.
It was not until it was transferred that the taxes were assumed by
Eco Futures.

Q: Yes. We are dealing with the point of Transfer, Mr. Usher. This is the date when
the transfer was supposed to take place. Your consideration was
20 securing the cost. It was in relation to securing a low cost, low
enough, as low as the Lands department would accept. Is that
correct?

5 A: That's correct.

Q: Because you are trying to save Eco Futures Belize Limited, your company, tax
off.

A: Its good business sense, I would say.

10 Q: Good business sense and that is why you as chairman would agree to the sale of
land belonging to Sittee River for the cost of \$20,000.00.

A: One of the reasons.

Q: To avoid your tax burden, that is the tax burden of Eco Futures Belize Limited.

A: (in audible)

15 Q: Now, there is an island within the development known as Southern Long Cayes
or North Long Coco Caye.

A: Yes, sir.

Q: That Island comprise down to 5 acres.

A: Approximately.

20 Q: Approximately. On the 3rd of April, 2012 that land was transferred from Sittee
River Wildlife Reserve to Eco Futures Belize Limited.

5 A: Correct.

THE COURT: That is the island?

MR. CAVE: Yes, measuring some 5 acres.

Q: What considerations went into that transfer? And I ask you to wear the hat of
10 Sittee River Wildlife Reserve because you were chairman of the
board at that time, I assume. What considerations went in to
transfer the 5 acres of land that is the island, to Eco Futures Belize
Limited?

A: First and foremost it was a special development area so that was one of the
15 reasons why we wanted to transfer it. It is easier to attract loans
or --

Q: This is very important so I want you to slow down. Just tell us slowly.

A: The consideration was it being a special development area and we needed to
develop it because we were being brought under pressure to do
something out on these places that would have amenities and that
20 was one of the areas that we thought that if we needed to raise
funds it would be easier to raise funds from a full profit entity
than it is to do it from a not for profit company with multiple

5 members. So that was one of the reasons and I was backed by
counsels, we were advised to do that with the areas that would
have been special development areas. It is typically the main
reasons why we are doing it.

Q: So the primary consideration was raising funds?

10 A: The primary consideration was taking on the areas that are special development
areas and not necessarily funds but it is easier to raise funds if
you need to. We were and still under pressure to expedite the
development so that is what we are doing.

Q: Your primary consideration was that you say it was easier to raise funds--

15 A: One reason. It is a lot more complex than meets the eye. We have the areas that
were designed in our master plan specific for commercial entities
like for hotels and stuff which are part of that place and a part that
was specific for the general population of the island or the
population of the members who would be using the island. That
20 is one of the main reasons to do that also so it's financing is one
of them and probably the most important one.

Q: Well, these considerations you just referred to, when were they discussed by the
board of Sittee River Wildlife Reserve?

5 A: These were discussed numerous times. I can't tell you exactly what dates they were done but this was a part of the whole master plan from the inception.

Q: The whole master plan from the inception was to transfer this to your company?

A: To transfer to the development.

10 Q: When was this master plan formulated?

A: Many years ago. This was done by an American guy way back. We have all the plans for it.

Q: Let me ask you something, how much did Eco Futures Belize pay for that?

A: I don't remember what the price was.

15 Q: You don't remember what the price was?

A: No.

THE COURT: The price for what?

MR. CAVE: That they paid for the island that was transferred.

A: I don't remember.

5 Q: Would you say that is a very common answer when it comes to matters of finances between yourself and Mr. Kazazi, I don't remember or I don't know?

A: I don't do the books and I don't follow the thing that closely so-- numbers are not my forte so--

10 Q: Can you tell us approximately how much you paid for this property?

A: I don't remember.

Q: And you are not able to estimate either?

A: I don't remember what it was.

15 Q: Mr. Usher, you remain chairman of the board till approximately October, 2016 when you were replaced by Mr. Peter Baker. Significantly it was the end of last year as well there were certain changes in your company that is Eco Futures Belize Limited. Is that correct?

A: Mhmm.

Q: Isn't that correct?

20 A: That's correct.

5 Q: You see if you nod there is no recording and Your Lordship has to hear it as well
as the recording has to pick it up.

A: Okay, yes they were.

Q: You were the primary shareholder up to that point?

A: Of?

10 Q: Of Eco Futures Belize Limited.

A: That's correct.

Q: All but 2 of the 10,000 shares.

A: Right.

15 Q: There has been a transfer of almost 7,000 of those shares to Eco Future
Development Incorporative.

A: That is correct.

Q: A company registered in Panama.

A: That's correct.

20 Q: Do you know who owns Eco Futures Development Limited registered in
Panama?

5 A: I know Peter Baker was--

Q: Peter Baker is now the majority shareholder in the developer, I take it Eco Futures
Belize Limited is still the developer.

A: I guess so. I'm pretty sure.

Q: You retain shares of the company, don't you?

10 A: Yes.

Q: You no longer director of the company?

A: No longer director.

Q: Is there a reason you are no longer a director?

A: Because of exactly what is happening here. I just have enough of it.

15 Q: But you retain your shares?

A: I retain my shares.

Q: And you retain the property that was transferred to as your time as chairman.

A: Well, the company retains that. It is the company.

Q: I see Mr. Bailey double his earnings. He went from one to two shares, Alfonso
20 Bailey? That's correct?

5 A: That's correct.

Q: Do you still have an agreement with the Global Property Alliance? Forgive me.

Eco Futures Belize Limited, does it still have a marketing and sales agreement with GPA?

10 A: I think so, yes. I have not been involved since October so I am not sure what is going on.

Q: There was still an agreement between GPA for sales and marketing?

A: I think so.

15 Q: Mr. Peter Baker is chairman of Sittee River. Mr. Peter Baker is primary shareholder in the developer and Mr. Peter Baker is the owner of Global Property Alliance. Is that correct?

A: It was.

Q: Let me ask you something. Were these shares transferred under any consideration?

A: (no answer.)

20 Q: You have to answer.

A: No.

5 Q: You transferred almost 7,000 shares in your company for no considerations, you are saying Mr. Usher?

A: The only consideration is the freedom of not having to deal with this, have somebody else take it on.

Q: Am we to be lead to believe Mr. Usher that on the basis of pure frustration--

10 A: Absolutely.

Q: That you transfer almost 7,000 of your shares in Sittee River, Eco Futures Belize Limited?

A: For a piece of mind.

15 Q: Let me ask you something. Why didn't you transfer the other 3,000 of your shares that you own and wash your hands of this matter? Why didn't you do that? That would have gotten rid of your frustration entirely.

20 A: No, I don't want that frustration at all and without having the majority shares in anything I sit back and I don't have to worry about that. I just had had enough. I have been bombarded for months and end and it gets to a point that you break and I was broken.

5 Q: You sat back well you say you could have afforded to sit back because you are
no longer director.

A: That's right.

Q: But Mr. Bailey is.

A: His business.

10 Q: You don't mind that he takes on--

A: He is a young man. He could take it on.

Mr. Cave: One moment please, My Lord.

Q: Do you know Andris Pukke, one of the subscribers to Sittee River.

A: Yes, sir.

15 Q: You aware that he is a convicted felon in the United States of America?

A: Right.

Q: Are you aware that he was convicted for crimes involving debts?

A: I knew he was convicted for contempt or something like that. I don't know what
it was.

20 Q: No, no, you were aware that he was--

5 A: I am not sure what his thing was. I know he was convicted for something. I am not sure what it was.

Q: Are you aware of what the American debt issue was involved?

A: I don't have the details of Ameri debt.

Q: But you know it involves Andris Pukke?

10 A: Yes.

Q: You were also aware that Mr. Peter Baker the now chairman of the board of Sittee River Wildlife Reserve and the owner of the majority shareholder in Eco Futures Belize Limited and the owner of Global Property Alliance was also imprisoned on contempt proceedings for
15 concealing assets owned by Mr. Andris Pukke.

A: I know about Mr. Pukke but I don't know about Peter and what his deal was.

Q: You would have met them?

A: I know them.

Q: You are aware that they enjoy a very close relationship, the two of them?

20 A: I guess. They don't live here so I don't know how close they are.

5 Q: What role did Mr. Pukke you said that he was involved in Sittee River Wildlife Reserve with the company since 2004 thereabout.

A: He was--

Q: When did you first meet Mr. Pukke?

A: Somewhere around 2004, I guess when I got involved with the project.

10 Q: What role did Mr. Pukke played in the development?

A: He was one of the original subscribers, the promoters of the project at the time.

Q: Was he also aboard member?

A: He was a board member at some point.

Q: But until when?

15 A: I think it was until 2004 or 2005 somewhere in there. I am not sure of the exact dates either but he was a board member at the time. With his legal issue he had to leave but the dates are somewhere in here. I just don't remember exactly what it is.

Q: He had to leave?

20 A: Because of his issues in the states.

5 Q: Because of his conviction and time in prison he had to leave?

A: Because of his legal issue in the court. He was not in prison then.

Q: He was imprisoned afterwards?

A: (no answer)

Q: He left the board for 5 or 6 months.

10 A: Yeah, I am not sure.

Q: Did he ever return to any involvement in the Sanctuary Belize project?

A: I understand that he was involved in the contracting for the market as part of the marketing team up for the Global Property. That is my understanding.

15 Q: Your understanding was that he was contracted to market on behalf of Global Property Alliance?

A: Yes, that's a marketing group up there.

Q: I want to be very clear that I am referring to Sanctuary Belize Project that is the Sittee River Wildlife Reserve. Did he play any part in the company, subsequent his conviction, subsequent to him emitting office?

20

5 A: His involvement as far as I am concern has nothing to do with development. It was strictly with marketing.

Q: Did you meet him after 2005?

A: I meet him all the time. He comes to Belize form time to time.

Q: He comes to Belize form time to time.

10 A: Yeah.

Q: What does he comes to do as far as you are aware?

A: Visit.

Q: He comes to visit you?

A: No.

15 Q: Do you know who he comes to visits?

A: He came to visit projects or whatever he does in Placencia.

Q: He came to visit the project? What project are you referring to?

A: Sittee River. If he is marketing then he needs to see what they are doing, if he is helping to market.

5 Q: When was the last time-- He would have come to Belize, visited the project in relation to his marketing duties?

A: I would like to think so.

Q: When was the last time you were involve that you see him visiting the project in accordance with the marketing business?

10 A: I don't remember but I think I seen him here two months ago or so.

Q: You saw him two months ago?

A: After I was retired he was here. I saw him.

Q: At the Sanctuary Belize Project?

A: Well I live there so if he passes around my place it is where I live.

15 Q: Before two months ago, when did you see him?

A: I don't remember what date I last saw him.

Q: You're understanding that his visit of two months ago is on account or in association to the Sanctuary Belize Project?

A: I have no understanding of why he was here the last time.

20 Q: But he was within the Sanctuary Belize Development area?

5 A: He came by my place. I was there. That is where I love. I live on the development.

Q: Now, are you aware that Mr. Andris Pukke, during the period that he was involved with the Sanctuary Belize project had introduced himself to persons using an alias Mark Romeo?

A: I know that he had used the alias Mark Romeo.

10 Q: How did you know that?

A: Because I heard of him doing it.

Q: Mr. Usher, did he not introduce himself to persons in your presence as Mark Romeo.

A: I can't remember that.

15 Q: You can't remember that?

A: Never.

Q: Is your answer you can't remember or never?

A: I can't ever remember that.

Q: Okay.

5 A: I know that I have heard that he been doing it but I was never involved with that
and I said that in there.

Q: You wouldn't have any reasons why he would introduce himself as an alias,
would you?

A: They have their own reasons why they do things. I don't know. You would have
10 to ask him.

Q: Just to be sure, Andris Pukke, there is an actual Mark Romeo according to your
evidence.

A: Absolutely.

Q: Associated with the Sanctuary Belize Project.

15 A: He was involved with the shrimp end of the project which was part of my equity
in to that development.

Q: But as far as you understand that was a name also employed by Mr. Andris Pukke
whilst he was involve in the project?

A: That is what I said earlier. I have heard of them using the name Mark Romeo.

20 Q: Now, Mr. Usher, do you not recall that in 2013, you met with Mr. Usher and other
board members of the intern board of Sanctuary Belize

5 Homeowners Association and that Mr. Andris Pukke was present?

A: I don't remember that?

Q: Let me refresh your memory. Is it not true that in June of 2013-- before I ask you that-- are you aware that there is an intern board established in respect to the Sanctuary Belize Homeowners Association?

10

A: Huh?

Q: Are you aware that there was an intern board established in respect to the Sanctuary Belize Homeowners Association?

A: Right.

15 Q: You are aware as well that on that board was Diane Allen was president?

A: Yes, sir.

Q: Andrew Usher was vice president.

A: Yes.

Q: Thomas Herskowiz was secretary / treasurer. Is that correct?

20 A: That is correct.

5 Q: Anthony Mock was a member at large.

A: I think so.

Q: Frank Costanza also known as Frank Conallin was also on that board as a member
at large.

A: I don't remember but I think so.

10 Q: Well, is it your recollection that in June of 2013 that intern board met and you
attended a meeting along with Andris Pukke. Do you recall that
meeting?

A: I don't recall that meeting.

Q: You don't recall that meeting.

15 A: It may be so but I don't recall.

Q: Do you recall on that occasion at that meeting which occurred in June of 2013
that both you and Andris Pukke were introduced as developers of
the project?

A: I don't remember that.

20 Q: It is possible though that it happened and you don't remember?

A: I don't remember.

5 Q: My question was specific. It is possible that it happened and you don't remember?

A: I don't think he was there.

Q: You don't think he was there but you can't remember?

A: I can't remember.

10 Q: You are aware that minutes were published at that meeting and were subsequently distributed?

A: It should be.

Q: And are you aware that on those minutes of the meeting were that his presence and your presence and all the person I referred to was recorded.

A: As I said, I don't remember. I really don't remember that.

15 Q: I want to ask you about the-- Mr. Usher you have already accepted in your testimony previously that at the time when the original articles of association of Sittee River Wildlife Reserve that you entered in 2003 that the concept of provisional member ship did not exist. Is that correct?

20 A: That is correct.

5 Q: Subsequently event he articles of association of Sittee River Wildlife Reserve was amended in 2008; the concept of provisional and full membership was established.

A: That is correct.

10 Q: In the said articles or pursuant to the said amendments, its provisional members did not have the right to vote at a meeting but they have the right to attend. Is that correct?

A: That is correct.

Q: The Company had a board consisting of full members. Is that correct?

A: That's correct.

15 Q: And provision was made with the appointment of two provisional directions.

A: That is correct.

Q: Those directors were to be selected, nominated and elected by the provisional members of the Sittee River Wildlife Reserve. Is that correct?

A: That is correct.

5 Q: As far as you are aware, there was never any provisional director selected,
nominated and elected by the provisional members of the Sittee
River Wildlife Reserve. Isn't that correct?

A: That is correct.

10 Q: As far as you are aware there was never any provisional director selected,
nominated and elected by the provisional members at an annual
general meeting?

A: We had provisional members elected at the time.

15 Q: As far as you are aware, and I want you to listen to my question carefully and all
elements of it. As far as you are aware, no provisional members
on the board of directors were ever selected, nominated and
elected--

THE COURT: You are putting three questions.

MR. CAVE: Well I am referring to the procedure in place which he accepted that
that is the procedure for the original directors to be appointed.

20 THE COURT: If he says no, which one will he be saying no to?

MR. CAVE: All right.

5 Q: Mr. Usher, during your time as a director, did the company ever hold an annual
general meeting?

A: Yes.

Q: When did that meeting take place?

A: Don't have the exact date but it was somewhere in 2000, I don't have the exact
10 dates but we had two board meetings, two um--

Q: In what year?

A: I can't remember the dates off hand.

Q: Let me make it easier for you, this amendment with the articles of association in
2008, did the company ever have an annual general meeting?

15 A: Not after.

Q: Not after the amendment?

A: No.

Q: As a matter of fact the company did hold an annual general towards the end of
last year. Isn't that correct? Where Mr. Peter Baker was
20 appointed the new chairman, etc?

A: I wasn't there.

5 Q: Well, certainly during the time that you were there after the amendment of the articles of association, there was no annual general meeting?

A: Meetings but not annual.

Q: The articles, the amended articles provided that the provisional directors were to be elected at the annual general meeting. Isn't that correct?

10 A: Yes.

Q: So you would agree with me that if no annual general meeting took place therefore no provisional directors could have been appointed lawfully or in accordance with the company's articles?

A: They were just no removed. Alfonso had been a provisional member for all the 15 years. We had a couple other people that were on there before.

Q: Mr. Usher, did you not say that prior to 2008 there wasn't any provisional member?

A: No, I didn't say that. I said they were provisional members. They were all provisional members at that time. We had two board meetings 20 and the provisional members were there. After '08 we started having meetings and it didn't work out.

Q: So you are saying they were provisional members--

5 A: On the board, yeah. We had them there.

Q: You are saying that they were provisional members in existence before the amendment of the articles in 2008?

A: Yeah.

Q: Is that what you are saying?

10 A: yes.

Q: And that the articles of association of the company from 2003 provided for provisional members?

A: Yes, sir.

15 Q: From the time that you were a director up until you emitted office last year, Sittee River Wildlife Reserve has never published in distributed any of its members any part of its financial?

A: No.

Q: Let me go a step further.

20 THE COURT: That was a double question there. They were neither audited nor published?

MR. USHER: Neither.

5 Q: You have never published or distributed any financials at all?

A: Not to the general population.

Q: Not to the general membership?

A: Not to the general membership.

Q: Only among the board?

10 A: We didn't have audited statements so.

THE COURT: I am sorry, but when you say published or distributed, I am not clear
what he is saying to what when he says "no".

MR. USHER: I did not publish audited statements.

Q: You said the financials were discussed among board members.

15 A: That is correct.

Q: So you have seen the financials, all of it?

A: What we had available I saw.

Q: And again you can't say or provide this court with any information regarding
what money was put into the project since your time as chairman.

20 A: I don't have an exact figure. I don't know those numbers off hand.

5 Q: You don't have an estimate either.

A: Not really, don't want to blurt a number that is completely out of context. I prefer not to do that.

10 Q: So, Mr. Usher let me put this suggestion o you. You don't want to discussed any numbers or give this court any indication as to what those numbers were because you don't want to provide a basis to determining what money was invested in the development project or part of developing the development project.

A: Are you suggesting or asking a question?

15 Q: I explained this to you, a suggestion is something you can respond to whether yes or no.

A: it is not that I don't want to provide a statement. I don't have a figure to give you. It is a growing number all the time.

Q: You don't want to tell us the last point at which you emitted office, what those figures were?

20 A: It an easily be 50 /60 million dollars that we put into the project. That is just development money, those numbers I am not dead sure of that's why I am qualifying that number.

5 Q: But what about monies generated from sales, gross sales?

A: I am not sure. It is probably in the excess of 80, see we finance so I don't have the exact numbers all the time. It's not like we get all the funds all at once.

10 Q: Yesterday, Mr. Usher, you testified in reference to what you said was an email you received from one Katy Ellis?

A: That is correct.

Q: You said, in response to a question I believe from my learned senior that Katy Ellis doesn't take sides. You recall you said that, don't you?

A: Yes. I don't think she takes sides.

15 Q: You still maintain that answer.

A: Yes.

Q: How long have you known her?

A: 3 years maybe. She used to live there for a while.

Q: Have you ever entered into business with her?

20 A: No.

5 Q: How about Andrew Usher, your family member, are you aware he entered into
business with her?

A: No, not that I know of but I don't know what they entered into but I don't think
so.

Q: How about Eddie Usher?

10 A: I don't know. He doesn't work with me. He is not a close family so I don't know
if he is.

Q: Ms. Ellis would have attended court in support of Sittee River Wildlife Reserve
and its representative or in relation to this matter and in relation
to petition for winding up that you are aware of. Isn't that correct?

15 A: That's correct.

Q: Ms. Ellis is not a witness in this matter as far as you are aware or in either matter
as far as you are aware?

A: No.

Q: Ms. Ellis is on the board of directors on any one of these companies?

20 A: Not that I know of. It could be recently but I don't think so.

5 Q: But yet Ms. Eillis would have demonstrated her support for you and the company by attending court sessions or court relations in relation to both matters despite the fact that her presences was not require. Is that correct?

A: It is her option to have people here come all the time. I don't know.

10 Q: Including Ms. Ellis who attended regularly. Isn't that correct? You were here, aren't you, when this matter is call. You don't see her?

A: She comes sometimes, when she is on my side or the other side.

Q: And you don't care?

A: Not really.

15 Q: You also know that apart from her presence and attendance here at court that she has been very vocal amongst the residence of Sanctuary Belize with respect to her support for you and Sittee River Wildlife Reserve and Eco Futures Belize Limited. She has been very vocal in her support amongst the residence Sanctuary Belize.

20 A: I don't socialize with them.

Q: So you don't know?

5 A: I don't read all the blogs that are out there. I don't get into it at all. If she is a part of the supporting crew then I am happy but they are many people like that, hundreds and hundreds of people that support me.

Q: Do you ever heard of comments she might have made on her personal facebook page or--

10 A: The only thing I know is that ting she had send to me.

Q: Let me finish my question.

A: Okay, please.

Q: You are not aware of comments that she would have made on her personal Facebook page indicating her strong support for yourself and Sittee River Wildlife Reserve and her opposition to the independent owners of Sanctuary Belize?

15

A: I know of some stuff that she send to me for example the email.

Q: I am referring to prior to the date of this email, prior to the date of this supposed email; she would have attended court with you.

20 A: I don't know.

Q: You k now don't if it's in support of you or not?

5 A: I hope it's in support. I hope everybody in here is supporting me. I don't know
what they are coming to do.

Q: Yes. I want you to look at tab P or JU1. You see at the top there, "Hi Rodwell,
here is the original email I received today. I was in court with
Johnny and our supportive team a few weeks ago and met you
10 then." She called you Johnny, doesn't she?

A: Everybody calls me Johnny.

Q: Everybody calls you Johnny. She refers to a supportive team. You don't know
what that team is, do you?

A: I don't get involve with the team playing at all.

15 Q: I just asked you if you know what she is referring to, this supporting team.

A: I don't know what supportive team she is talking about.

Q: Yes. "I want nothing more than to see this man gone from Sanctuary Belize",
which man you think she is referring to?

A: Probably Tom, I guess.

20 Q: Probably Tom, that's your best guess?

A: yes.

5 Q: "And let Johnny go on developing our already beautiful home." Yes? "I am one billion percent on board with Johnny and his team." That sounds like a reigning endorsement, doesn't it Mr. Usher?

A: Looks so.

Q: You are not aware that you enjoy this level of support from her, did you?

10 A: I get support form a lot of people; she is just one of them.

Q: She has never come to you expressing her support?

A: I don't entertain any of the-- I don't as a rule. I don't entertain any because it is damn if you do and damn if you don't so I don't at all. It is a rule that I don't.

15 Q: You would agree with me that if a person says this, if this is what she said that person says that person is a very strong supporter.

A: If that is the case then yes I agree and I am happy.

Q: You would agree with me that if the person says I want nothing more than to see this man gone from Sanctuary Belize.

20 A: I would not agree with that.

5 Q: I want you to understand my question. I am not asking you if you want to agree
with wanting the man gone.

A: Okay.

10 Q: Listen to my question. The person would have said that, “I want nothing more
than to see this man gone from Sanctuary Belize”, is a person you
would say strongly opposes to the individual he or she is referring
to. Don’t you agree?

A: I guess so, yeah.

15 Q: Mr. Usher, whether you were aware that if a person forwards an email, it becomes
possible to change all the properties in that forwarded email
included the date, time, subject, everything.

A: And I said I wasn’t sure.

Q: And you still not sure?

A: Yeah.

20 Q: Mr. Usher, are you aware that about a week prior to the date of this supposed
email that Ms. Katy Ellis in response to a greeting she had
received from Mr. Thomas Herskowitz.

5 A: I am not aware of that.

Q: Let me ask you something. Do you know of any reason why Mr. Herskowitz would have sent an email setting out in writing, details of his plans to a person who would express publicly her support for you? Could you think of any logical reason why that would be so?

10

A: I can't think of what people do what they do.

Q: And again you said yesterday that you have no idea because you have no direct knowledge whether this email was altered.

A: I don't have an idea.

15 Q: You are aware that Mr. Ellis began to distribute this supposed email among the residence of Sanctuary Belize at or around the date when she said she received it?

A: I am aware when she sent it to me. That is it. I am not copied into all the stuff. That is what I am aware of. If I was copied to somebody else that is what would have been. I am not sure. I don't remember.

20

Q: You got into any discussions among the residence of Sanctuary Belize concerning this email, were you?

5 A: I didn't talk to anybody about that.

Q: can you raise your voice, please?

A: No.

Q: Mr. Usher, are you not aware that from the very date when that email was distributed among the residence from the very date Mr.
10 Herskowitz denied that he had sent any such email. Are you aware of that?

A: I don't think he sent me any such thing denying it. I can't remember seeing that.

Q: He never expressly denied it to you. You never met him?

A: No. I really can't speak for what he was telling other people. I don't know what
15 he was saying. I don't remember him sending me any email denying it.

Q: I never suggested that he sent you any email denying it.

A: I am not aware.

Q: Next question, aren't you aware that there are members or residence of the
20 Sanctuary Belize within Sanctuary Belize who had ask for Ms. Ellis to produced the original email?

5 A: Not aware of that.

Q: You said, Mr. Usher, that you were privy to certain things that was published in the Sanctuary Belize Association Facebook page? That you became aware of certain things that were published on the Sanctuary Belize Homeowners Association's Facebook page?

10 A: It is not something that I follow at all, none at all.

Q: You can't say from your direct knowledge what was published on that page?

A: I can't because I don't follow it.

Q: With specific reference to the statements which are included here in the claim form which you said were published on that Facebook page. You didn't follow it didn't you?

15

A: I didn't follow it.

Q: You can't speak from your direct knowledge as to when it was published?

A: You talking about the letter?

Q: No, I am not referring to the letter. I am referring to the statements which you say in your claim form.

20

A: What statements?

5 Q: To be fair to you let me be quite specific. At paragraph 31 of your witness
statement, you detailed that sometime in 2015 to February 2016
that the defendants falsely and wrote and publish on the World
Wide Web on Facebook page-- concerning claimants in the way
of trade or business following defamatory words and those are
10 attached at tab1. Yes?

A: Yes.

THE COURT: What are you reading now?

MR. CAVE: I was referring to what he said at paragraph 31 of his witness statement.

Q: You said to us, you don't follow these things that are published on Facebook etc.
15 So I assumed all you would have know about those publish would
have been what somebody told you.

A: I see some of it but I don't see all of it at all.

Q: You see some of it but not all of it.

A: if it draws my attention I will look at it.

20 Q: I want to draw your specific attention to the ones at Tab I. There is about 5
statements detailed there. You can't say whether you saw those
statements or not?

5 A: What I have here I saw but I don't follow Facebook. If my wife checks it and say
look at that, I would go in and look at it so I see it. It's on my
page I would look at it.

Q: You are saying you saw these specific items which you are referring to?

A: Yes.

10 Q: The Sanctuary Belize Homeowners Association Facebook page, it is not a public
group is it?

A: (no answer)

Q: You are aware that there are certain pages on Facebook that are accessible to the
public at large?

15 A: Yes.

Q: And then they are some pages that are accessible only upon a request to join and
the administrators of the page allowing permission.

A: That is correct.

Q: The Facebook page to which you refer is not a Facebook page that is open to the
20 public.

A: Right.

5 Q: No member to the public at large could just simply click on this page and become aware of the contents and the statements that were published in it.

A: Agree.

Q: You don't know how many persons were members of the Facebook page?

10 A: Not really.

Q: Were you a member of the page?

A: I am not on Tom's page.

15 Q: The only way you could have seen the contents you speak of is if some member on the page allowed you access or showed you what was published there.

A: That is correct.

Q: What I note here from this document, Mr. Usher, is that there is no print out or screen shot of the particular page of the statements that you are referring to.

20 A: No.

5 Q: So, put it another way, what appears here in tab 1 is what you say is a reproduction of what appeared on the page.

A: That is a copy.

Q: Or reproduction. Somebody would have recorded what they supposed saw wrote it here and presented it to this court.

10 A: I don't know how it was done.

Q: That is because you didn't do it.

A: I didn't do it.

Q: You can't say from your direct knowledge whether what was stated here is a verbatim reproduction of what was published on that date.

15 A: I am not on that page so I can't.

Q: And you stand there and testify, in so far as to what was published, you dependent upon third party to in fact tell this court what were published.

A: Yes, somebody provided it. I didn't take the screen shots.

Q: And you didn't reproduce it yourself?

20 A: No, I couldn't have done that.

5 Q: Let me say this, this goes for every single one of the statements which you
indicted were published either by way of the World Wide Web
or by Facebook. You didn't reproduce it yourself?

A: the one I reproduced was the one that Katy Ellis sent me.

10 Q: The one you reproduced it the one that Katy Ellis sent you. What are you referring
to?

A: That email, Katy's email.

15 Q: I want to be very clear to you. I am referring to the Facebook statements which
you said, which you refer to and I am referring to certain
statements which you say were published on the web by the
independent owners of Sanctuary Belize. Those are the
statements as well as the other statements which you alleged were
defamatory on the independent owners of Sanctuary Belize web
page.

A: Yes.

20 Q: Those were never reproduced by you so you can't say whether it is a true or
correct or verbatim representation of what was published.

A: No.

5 MR. CAVE: My Lord, it is 10 pass 12.

THE COURT: Do you think it is a convenient time?

MR. CAVE: Yes, it is.

THE COURT: What time should we come back? Are you available for tomorrow?

MR. WILLIAMS: No, I am not available for tomorrow. I have indicated earlier that

10 I have an obligation for some examination and I fly out the
country to Huston. I need to do some medical examination.

THE COURT: It doesn't look like we will be finished today.

MR. WILLIAMS: I don't know how much longer my friend will be.

MR. CAVE: I am coming to the end and if the court is reminded to extend the period

15 this afternoon. It may be possible to get it in because they only
have one witness.

THE COURT: How much longer you will be with this witness?

MR. CAVE: My Lord, I think about 1 hour or less.

THE COURT: I return next week. You are not available for any part of tomorrow

20 morning?

MR. WILLIAMS: Well, my flight is around noon.

5 MR. CAVE: I have one matter in the morning before Justice Young.

MR. WILLIAMS: I don't think we can finish tomorrow for sure, given the amount
of witnesses still outstanding.

THE COURT: What about next week Wednesday? And would you be available on
the Thursday as well because I would like to complete everything
10 in one block.

MR. WILLIAMS: I have an arbitration thing but I can adjust that so I can commit
for Wednesday and Thursday.

THE COURT: We don't have to make a decision now. Let us see how far we can go
today. What time do we get back here?

15 MR. WILLIAMS: I prefer 2 o'clock if that is okay.

THE COURT: 2 o'clock, okay.

(Court adjourned at 12:17pm.)

5 Afternoon session

Court starts at 2:00 p.m.

CROSS-EXAMINATION OF MR. USHER BY MR. CAVE COTINUES.

THE COURT: You are still under oath okay.

MR. CAVE: Thank you. May it please you My
10 Lord.

Q. Mr. Usher, I think before you left before the
break I had asked you about certain publications on a
Facebook page, Sanctuary Belize Homeowners Association
Facebook page which you referenced in your witness
15 statement. You had accepted that you cannot say
whether the statements which you have in your witness
statement are an exact or true representation of what
was published on the Facebook page, isn't that correct?

A. Can I correct something there?

20 Q. I am asking you what you said. I anticipate that
you would want to correct something. But I ask you
whether that is what you said this morning before we
left?

A. I did.

25 Q. That is what I am asking you. I am not asking
you what you want to correct. You could correct what
you want to correct when you have a chance to when you
are re-examined. Yes?

A. I said yes already.

5 Q. And equally, Mr. Usher, you are unable to say who was the author of these comments or these statements?

A. Who are the author of the comments?

Q. Yes, the statements that you referred, who was the person who wrote them. You can't say that.

10 A. I can only say where I got it from I can't say who actually produced it.

Q. You can't say who actually wrote these statements on Facebook?

15 A. We have multiple statements. Which particular one?

Q. Okay, any of them.

A. Some of them were put out on the IOSB.

Q. I am talking about the Facebook statements. I am referring to those statements in particular, okay?

20 A. Yes.

Q. You are aware that on Facebook, they call it a social network, a person may post something and several other persons have an opportunity to make comments in relation to what is posted, yes?

25 A. That is correct.

Q. Equally, other persons who are members of the group can post to that page and other persons may comment. Yes?

A. That is correct.

5 Q. You can't say whether the statements that you included here in your witness statements were directly attributable to Mr. Thomas Herskowitz. You cannot say that?

A. I can only say what I printed out from that
10 Facebook page.

Q. What you printed out from that Facebook page?

A. Yes. Some of them are authored and it is noted it is authored by several people.

Q. I want you to look at Tab I that we were
15 referring to this morning.

THE COURT: Is My Lord with me?

THE COURT: I don't know what Tab I is. I am looking at the witness statement of John Usher.

MR. CAVE: It is I in the witness statement,
20 I believe.

THE COURT: I am at paragraph 31 page 5.

MR. CAVE: May I have a moment, please.

There is a Tab, My Lord, that we had dealt with this morning and we had identified this morning.

25 THE COURT: Oh that is the e-mail?

MR. CAVE: No. Tab 22, My Lord, four pages in.

A. One page on that tab.

THE COURT: We are dealing with the trial

5 Bundle.

Q. Are you with me so it should be tab I yes, that is correct.

THE COURT: Just let's make sure we are all on the same page it starts with II.

10 MR. CAVE: It says Facebook with a colon followed by a statement.

THE COURT: Tab 22.

MR. CAVE: Yes, at tab 22 it is about 4 pages after, My Lord. The 5th page after the tab.

15 THE COURT: You said 4. It's 6 pages.

MR. CAVE: Are you with me, Mr. Usher.

A. With you, sir.

Q. Now let me read some of those statements to you. You can't say whether in relation to those statements
20 that Mr. Herskowitz was the author of those statements?

A. I got it off the IOSB page and some of them are authored by him, some not.

Q. You got these Facebook comments off the IOSB web page?

25 A. Web page.

Q. Do you appreciate, Mr. Usher, that the Facebook page and the IOSB web page are two separate pages?

A. Which Facebook page you are talking about?

Q. Any Facebook page and the web site are two

5 different things?

A. There is a website and there is a Facebook page which I am privy to one and not the next.

Q. Facebook statements are not published on the IOSB web page, isn't that correct?

10 A. Right.

Q. So when you said a moment ago that you got these statements off the IOSB web page, that couldn't be correct, would it?

A. That is the open one. That is correct.

15 Q. And we had established this morning because you accepted that the Sanctuary Belize Homeowners Association Facebook page on which you said these comments were made is a closed page.

A. Yes, that is a closed page.

20 Q. You remember saying that?

A. I remember saying that, that is a closed page.

Q. So whatever statements you got you only got from an open IOSB web page, is that correct?

A. That's correct.

25 Q. So therefore you couldn't have seen these statements that you have attached to your witness statement which you say was part of the Facebook page, the closed Facebook page. You couldn't have seen these statements here. Isn't that correct?

5 A. If it's off the Facebook page I can't see the presentation unless it is shared with me. The website has - - I have open access to that, I can get to it, it is public knowledge.

10 Q. We can deal with that in a moment. I am dealing with these comments here, just before the colon there it says Facebook, Facebook and Facebook so we are dealing with Facebook statements, statements supposedly published on Facebook I assume that is what you meant when you put Facebook, right?

15 A. I guess that is what I meant, yes.

Q. So I am asking you about where these statements came from. They came from Facebook, yes?

A. Yes, they came from Facebook.

Q. And not the website?

20 A. I can't remember exactly which one. It says Facebook. So I can't - -it's a lot of --

Q. Mr. Usher, you are not sure about these statements or publications, are you?

A. I know that these came from the Internet, okay.

25 Q. You know that these came from the Internet?

A. Yes, and it's either from the Facebook or one was - -if its Facebook it came from somebody shared it who is a member of that Board otherwise it's off the website.

5 Q. Mr. Usher, you gave evidence in relation to the
publication of these statements. I am simply asking
you questions directly to your knowledge of the
publications. Specifically I want to know, Mr. Usher,
whether you saw these statements and whether you can
10 say who authored them.

A. I saw these statements that is why I put them
here.

Q. You say these statement?

A. Yes.

15 Q. You are not sure whether it was on Facebook or
the web page?

A. I am not sure but I know that it's what I saw.

Q. And in accordance with your testimony this
morning you can't say whether these statements here
20 that are produced in your witness statement is a
correct proper representation of what was published
there on Facebook?

A. I can say that it's what was published in either
the IOSB web page or I got it from a source that gave
25 me that was extracted from the Facebook.

Q. I don't think you understood my question. I was
simply asking you whether you yourself can say from
your direct knowledge statements here you reproduced in
your witness statements was a correct representation of

5 what you say were published?

A. What I put down here is what I got out there.

Q. What you got?

A. Yes, what I took off, what was taken off the - -

10 Q. What you took off or what was taken off the
website?

A. Some of it I took off but this right here is what I took off one of the mediums I don't know if it is the web page, their web page you call it or if it's Facebook.

15 Q. Let me suggest this to you. You are quite uncertain about all this, isn't that correct?

A. I am not uncertain about anything at all.

20 Q. You don't know whether these statements came from one web medium or another. You don't know whether it came from the IOSB web page or whether it came from Facebook page, isn't that correct?

A. This came from the IOSB page.

Q. This came from the IOSB page?

A. Yes.

25 Q. Just for clarification because my learned senior wants to know what you are referring to as this. When you say this came from the IOSB web page?

A. This tab I, one page.

Q. Those are the five statements you are referring

5 to. And again you can't say who was the author of that statement?

A. I can't remember right off hand, yes.

Q. Now, in relation to - - certainly you took issue with what you say were publications on the IOSB web
10 page, certain statements which were made, isn't that correct?

A. That is correct.

Q. You say they were defamatory?

A. That is correct.

15 Q. In fact you say that it was defamatory for there to be a publication which suggested that you were in breach of the currency regulations for the Belize Central Bank?

A. Yes, I took objection to that.

20 Q. Is it not true that the Central Bank indicated to you or representations of the Belize Central Bank indicated to you that the practice of having lot owners remit the purchase funds to an account overseas, that that was in breach of Central Bank Regulations? They
25 didn't indicate that to you?

A. They didn't.

THE COURT: Who was that sorry?

Q. I asked him whether representations of the Central Bank indicated to him that the practice of

5 persons remitting purchase funds to an account overseas
was in breach of the Central Bank Regulations. They
did?

A. I said yes.

Q. Prior to them giving you that indication, that
10 was the practice that the company had adopted, isn't
that correct?

A. They sent a letter saying that we were in breach
but we sent in all the information that they needed.

Q. They sent a letter saying that you were in
15 breach?

A. Yes, and we sent all the information to them to
qualify what we had, so it was a sharing data.

Q. Well, they were of the view certainly that you
were in breach of those regulations?

20 A. Based on the information they had.

Q. You subsequent to that made certain
representations to the Central Bank. That is the case?

A. Yes.

Q. Are you still having persons remit funds to those
25 accounts overseas?

A. I can't say what is being remitted right now.

Q. Up to the time you left Sittee River Wildlife
Reserve and left office as a Director of Eco Futures
Belize Limited, you were aware of any changes in the

5 practice which you had adopted previously?

A. We made changes.

Q. What were those changes?

A. We provided all the information to Central Bank that was requested. They sent us a list of stuff that
10 they wanted us to make proof that what their allegations were and we sent everything in that they needed and that is where it ended off when I left that was how we were doing it.

Q. Did you have persons remit those funds to
15 the - - did you continue to have persons remit those funds to the accounts overseas?

A. There were some funds still collected overseas but most of the funds were coming here. Those were only for GPA.

20 Q. So, some funds were collected overseas?

A. Right.

Q. In relation to what?

A. Tp lot sales.

Q. I am referring to the point after the Central
25 Bank wrote to you?

A. For lot sales. All funds were directed to Belize when that was done. We started directing all funds to Belize as a matter of fact.

Q. Now, you said that in your witness statement that

5 you had been accused of money laundering?

A. Right.

Q. Can you point to me which statement which said that you or any of the company's, any of the Claimants were engaged in money laundering?

10 A. I can't show you any sign of us -- what is the question, sir?

Q. Can you reference the particular statement which indicated that any of the Claimants were involved in money laundering? What statement do you refer to when
15 you say -- you say in your witness statement that the company was not engaged in money laundering. This was at paragraph 48 of your witness statement. You felt that there was an accusation that the Claimants were engaged in money laundering?

20 A. That is what I thought.

Q. That is what you thought they said?

A. Yes.

Q. Well I was simply asking you to point me to the specific statement which you say was an indication that
25 you were involved in money laundering. What supposed defamatory statement are you referring to?

A. I can't go back to it right here but --

Q. You can remember any specific charge that you were involved in money laundering?

5 A. No, never.

Q. No, a specific charge made by any of the defendants. Do you recall that specific charge made by any of the Defendants that you were engaged in money laundering?

10 A. I can't remember right off hand.

Q. Well, let me put this to you. Your suggestion that they had accused you of engaging in money laundering was as a result of them saying that you were not registered with the FIU. You based that accusation
15 off of the simple statement that you were not registered with the FIU. Isn't that correct?

A. That is one of them.

Q. There was no specific charge that you were engaged in money laundering, isn't that correct?

20 A. I have heard it before so I know that it has been said.

Q. Mr. Usher, I assume that if you had any statement published here specifically accusing you of money laundering that you would have included it in your
25 claim, isn't that correct?

A. Yes.

Q. The very basis of your charge that they defamed you by accusing you of money laundering is the simple statement that the company, Sittee River Wildlife

5 Reserve was not registered with the FIU. Isn't that correct?

A. That was one of them.

Q. What is the other? That is one. What is the other reason?

10 A. Just one.

Q. Well, are you aware whether when the obligation arose to register with the FIU, when the obligation for a not for profit company to register with the FIU arose? When did that obligation come into force?

15 A. We were not aware of it so we did it when it was brought to our attention.

Q. It was brought to your attention by the Defendants, isn't that correct?

A. It was brought to us by the attention of the
20 Central Bank.

Q. When was it brought to your attention?

A. I don't remember exact dates.

Q. Prior to that there had been no registration with the FIU, isn't that correct?

25 A. We were registered with them.

Q. I am referring to Sittee River Wildlife Reserve. Prior to it being brought to your attention there was no - - you had not registered the company with the FIU, isn't that correct?

5 A. We have it. It's - -

Q. We are going to get there, please. I am just asking you to answer my question. It is a simple question.

A. I don't know the date it was there. I know it was put. I don't remember the date that it was done either.

Q. You are referring to a specific date that you put it there?

A. That's correct.

15 Q. Before that certificate, you had never received any other certificate from the FIU registration?

A. No.

Q. Because you were not registered before that particular certificate with the FIU, isn't that correct?

A. I don't think we were before.

MR. CAVE: My Lord, tab 23 please. Tab M in your witness statement. Do you see that certificate of registration to which you refer?

25 A. Yes.

Q. Can you say what is the date on which you became registered with the FIU?

A. 11/4/2015.

Q. That is in fact the 4th November, 2015 isn't

5 correct?

A. I think so. I don't know if it is the British system or the --

Q. These certificates are usually issued for a year, isn't it?

10 A. Right.

Q. So if indeed the 4th was in reference to the month then it means it would have expired on in March of the other year, isn't that correct?

A. That is correct.

15 Q. So 11 had to be reference to November, isn't that correct?

A. Yes, that is correct.

Q. But yet you had previously testified that this was a certificate dated April or previously you had
20 given evidence that this was a certificate dated April of 2015 or issued in April of 2015?

A. Not sure of what I had there was the dates.

Q. Well I have the note in relation to your dates. My reference to date was in the list of documents and I
25 can't attribute that to him.

Q. Mr. Usher, this project that you Sanctuary Belize project which you say you are no longer involved with, would it be a fair assessment to say that that project is significantly behind the schedule that you had

5 originally anticipated?

A. No.

Q. Let me put this to you, Mr. Usher. There has been numerous complaints by the residents, there has been numerous complaints by the residents of Sanctuary
10 Belize with respect to the pace of development, isn't that correct?

A. We have a few complaints, not numerous.

Q. I am suggesting to you that there have been numerous.

15 A. Not numerous. I object. I refuse to accept numerous. That is not true.

Q. In 2006 you published a two-year completion plan, isn't that correct?

A. For what?

20 Q. For the project?

A. No, it is impossible.

Q. You never published a two-year completion plan?

A. Not for completion of the project. The project is humongous. There are certain things that we had to
25 accomplish but not the entire project. That is ongoing. There are some amenities that are there but not the - - the project is still ongoing.

Q. In terms of the common amenities, are they all complete, Mr. Usher?

5 A. No, they are not all complete.

Q. Have all the residents been supplied with electricity and water?

A. No. We are still selling lots so those are going to be coming on line later on.

10 Q. I am referring to the residents. I assume that means that the persons whom you have already sold lots to who are residing there?

A. Everybody that resides there has water and power, everyone; whether it is solar but they have it there.

15 Q. You have installed those?

A. Some installed by us and some by the individuals.

Q. Well, my reference was to what you have supplied. Have you supplied all of these residents with power and water?

20 A. We have. I'll say no, not all lots have it. We have 30 odd miles of road that we are putting in and it follows with water. And 28 miles has water already so as the infrastructure goes in the utilities follow.

Q. Let me say this to you, Mr. Usher.

25 A. Yes, sir.

Q. Without proper financial records from the company with respect to what money was raised from the lot sales, the members or the residents of Sanctuary Belize would have no way of knowing what money was available

5 to you for the development construction of those common amenities that you refer to. You would have no way of knowing what money is available to you. Isn't that correct?

A. No, they don't.

10 Q. It was part of the original promise, wasn't it, when those persons bought, that money, the net proceeds of the lot sales would be used for the purpose of developing common amenities. Isn't that correct?

A. That's correct.

15 Q. Would you say that it was to their benefit that those common amenities are developed and improved?

A. Absolutely, it is the big drive.

20 Q. Would you agree that the development of those common amenities have a direct impact upon the value of the property that they bought from you, isn't that correct?

A. It adds value every mile we put in it has value.

25 Q. You would agree to not direct the net proceeds of sale of those lots to the development of those amenities would be a misrepresentation, wouldn't it, a misrepresentation to those persons who purchased within the development?

A. Could you repeat that.

Q. It would be a misrepresentation to not direct the

5 net proceeds of sale to the project as you originally indicated that you would?

A. If it was not directed to it then it is different but it was directed.

Q. It was directed?

10 A. Yes. The net was directed.

Q. But you can't tell us what those net proceeds of sale were?

A. I don't remember what they are.

Q. You don't remember?

15 A. No.

Q. And of course the members have no way of knowing or judging whether what you say is true or not, isn't that correct? The members have no way of knowing whether what you just said is true or not?

20 A. Well they can see what we are doing. The proof is in the pudding. It is what we put on the ground. That is the best indicator, actually.

Q. This Court equally has no way of knowing whether you directed the net proceeds of sale to the project as
25 you promised those purchasers?

A. What net proceeds was available came to the project. After all of the expenses of GPA and stuff like that that ended up right down here and that is what we build that project with.

5 Q. And we will just have to take your word for it?

A. Well I don't have anything to prove that to you right now so. That is why the audits are being done.

Q. One of of the issues you referred to was the issue of illegal foreclosures, isn't that correct?

10 A. Yes.

Q. You say that was defamatory of the company?

A. As far as I am concerned, yes.

Q. You had adopted the practice of selling off lots of persons who were behind in payment, isn't that
15 correct?

A. If somebody doesn't pay and the contract says that they will - - it's based on contract, it is not based on what I like or who I feel like doing it to. It's a contract.

20 Q. I wish you would answer my question directly and we would move along faster. The fact is that most of the contracts that is prior to 2014 never included a default provision, isn't that correct?

A. I am not sure.

25 Q. Well let me put it this way. The contracts which those persons signed with Sittee River Wildlife Reserve, the purchase contract, did not provide specifically for the consequences of a failure to pay on time, isn't that correct?

5 A. Some of them had and I guess some of them didn't have. I am not sure of all of them. I mean there were eight hundred plus I really can't talk for all of them.

Q. Mr. Usher, isn't it true that after 2014 you started producing contracts with the default provision
10 in there, isn't that true?

A. I guess so I don't really remember what date or anything I know some of them have it in and some don't. But there are a lot of contracts that are varied. They are not all the same.

15 Q. Well they are standard terms, aren't they?

A. Not all of them were standard. For example Mr. Herskowitz is a special. He made his contract. That is a special arrangement he had so we accommodated.

20 Q. Well you would agree that many of those contracts did not have what is called an acceleration clause, a clause which said essentially that if you failed to make a payment that all the payment became due, isn't that correct?

25 A. I don't think they were like that. They were much more lenient.

Q. Well, in those circumstances notwithstanding, you would sell the property and keep a hundred percent of the proceeds of the sale of the property after you have

5 foreclosed notwithstanding that payments had been made
up to that point, isn't that correct?

A. I am not sure how it was done.

Q. You are not sure how it was done?

A. No.

10 Q. Mr. Usher, this is what I want to suggest to you,
that in respect of what you say is the trading
reputation, that is the trading reputation of the
Claimants, that that trading reputation has been
severely damaged by acts of self-dealing on the part of
15 the Directors of this company?

A. I ask you to ask that question again.

Q. I am saying that whatever trading reputation you
enjoyed, that is the Sittee River Wildlife Reserve, Eco
Futures Belize Ltd., and GPA, I am saying that
20 whatever trading reputation that you enjoyed that that
trading reputation was damaged by the acts of
self-dealing on the part of the Directors including
yourself.

A. It wasn't damaged by that. I disagree.

25 Q. You don't think that the actions pursued by
yourself and Mr. Peter Baker among others contributed
to diminishing any trading reputation which that
company enjoyed?

A. I don't think it was the sole none at all.

5 Q. But you think it contributed?

A. It might have.

Q. Equally I suggest to you that whatever trading reputation Sittee River, Eco Futures Belize Limited and GPA would have enjoyed, that that have been severely
10 damaged by your lack of transparency.

A. I don't think so.

Q. That is what I am suggesting to you.

A. I don't think so.

Q. You don't think so?

15 A. No.

Q. You don't think that prospective buyers or purchasers in the Sanctuary Belize project might have been impacted by the fact that you have not released or distributed to members a single financial report
20 audited or not from the inception of the company formation? You don't think that has an impact on the company's trading reputation?

A. I don't think so.

Q. Let me suggest to you further that whatever
25 trading reputation Sittee River, Eco Futures Belize Ltd and GPA Incorporated would have enjoyed that that would have been damaged by what you admit was the involvement of Mr. Andris Pukke in the project, isn't that correct?

A. I don't think so either.

5 Q. You don't think so?

A. No.

Q. You don't think that prospective buyers might have been dissuaded by the fact that a convicted felon was involved in a project that they were being asked to buy into and that he was one of the founding members of the company, you don't think?

A. I don't think so.

Q. You don't think that the fact that he would have been convicted for crimes involving dishonesty might have had some impact on the company's trading reputation?

A. That could have.

Q. Let me suggest this to you, Mr. Usher. You only filed this defamation claim which is the Claimants Sittee River, Eco Futures Belize Ltd and GPA filed this defamation claim two months after Mr. Herskowitz along with other persons had initiated a Petition for winding up, isn't that correct?

A. Well that is not the sole reason at all. We had multiple reasons.

Q. I am asking you? Let me be very clear with my question, Mr. Usher, that this defamation claim was filed only after he along with other persons had brought a petition for winding up. Isn't that correct?

5 A. Not the sole reason.

Q. I am not asking you if it was the sole reason.

A. It is not correct.

Q. Mr. Usher, I want you to answer my question. I
am asking you about chronology. Let's talk about
10 reasons afterwards.

A. Okay good.

Q. The fact is that this defamation claim was
brought after they had already brought against the
company a petition for winding up. Isn't that correct?

15 A. It was after.

Q. That petition for winding up was some time in
January of 2016, wasn't it?

A. That is correct.

Q. The date range which you gave in respect of these
20 statements was some time in 2015, isn't that correct?

A. I think so.

Q. Mr. Usher, in your witness statement you refer to
certain statements which had been made since 2015.

Isn't that correct?

25 A. Yes.

Q. You were content to do nothing about these
statements until a petition for winding up was filed,
isn't that correct?

A. No, that is not correct.

5 Q. Mr. Usher, that is not correct?

A. It's a series of things that built up to that. The winding up was not the cause. All those years of --

10 Q. Mr. Usher, let me put it to you simply. This lawsuit here is really an attempt by you to keep Mr. Herskowitz quiet and to keep the members of the IOSB quiet.

A. I disagree.

15 Q. You don't deny at all that you acted in breach of your duty as a Director to Sittee River Wildlife Reserve. You don't deny that at all, do you?

A. I acted in what?

Q. You acted in breach of your duty to Sittee River Wildlife Reserve. You can't deny that, can you?

20 A. I am certainly not perfect I must have had some --

Q. Did you mean to answer my question in the affirmative? Is that a yes to the question I asked?

A. I do have some faults, yes.

25 Q. I didn't ask you about your personality. I do as well if that is any consolation?

A. Is that a yes to.

Q. But I asked you a specific question in relation to the company's operations and your role in the

5 company's operation. Is that an answer to the question
I asked, do you mean to say yes in answer to the
question that I asked?

A. Yes, again.

Q. Let me suggest to you further that by a series of
10 corporate vehicles and legal agreements you transformed
what was supposed to be a not for profit venture into a
scheme to benefit yourself as well as Mr. Peter Baker.

A. Agreed.

Q. I want to take you to paragraph 28 of your
15 witness statement. At paragraph 28 of your witness
statement you say that SRWR, PFB, GPA are carrying on
the trade or business of real estate development
promotion, marketing and sale of lands in Sanctuary
Belize for profit. That is what you say?

20 A. That is correct.

Q. Is SRWR no longer a not for profit company?

A. It is still a not for profit company.

Q. Certainly Eco Futures Belize Limited has always
been a for profit company?

25 A. Yes.

Q. GPA equally?

A. Right.

Q. But yet you say that together these three
companies one of which is a not for profit company are

5 engaged in the trade or business of real estate
development and the sale of lands in Sanctuary Belize
for profit.

A. Sittee River is the not for profit company but
they own the property.

10 Q. So you didn't mean to include them?

A. You have to include them because they are not for
profit so you are not going to be sharing anything with
that. They are part of the whole thing.

Q. The not for profit?

15 A. Yes.

Q. But yet they transferred by virtue of the
agreement which we spoke about this morning significant
control of over their assets to your company, yes?

A. Right.

20 Q. In which Mr. Peter Baker is now the majority
shareholder?

A. Yes.

Q. And you in turn is given other responsibilities
by that marketing agreement to GPA, another company of
25 which Mr. Peter Baker is the owner?

A. Yes.

Q. So, there is in that arrangement, would you say,
a vehicle for Mr. Baker who was one of the original
subscribers of a not for profit company could then

5 profit from it. Would you agree?

A. I don't think that is the way it is set up.

Q. Let me ask you something. In terms of the marketing of the Sanctuary Belize project, much of that marketing is done overseas, isn't that correct?

10 A. Part of it is done overseas and part is done here. About half of it is done here.

Q. Mr. Usher, the vast majority of the purchasers in that development are in fact foreigners, isn't that correct? That is the target market for the sale of
15 residential lots.

A. North America.

Q. You would agree that to the extent of your trading reputation any of these companies would have been impacted that impact would have occurred overseas,
20 isn't that correct?

A. It impacts here.

Q. Let me ask you something. Eco Futures Belize Limited apart from its responsibilities and its engagement with SRWR, do you have any other clients?

25 A. Could you repeat that.

Q. Are you in development of any other thing apart from the SRWR?

A. I am not in any other development with anybody. I am not.

5 Q. Up to the point when you left. I know you want to wash your hands from the matter but let's take you back to the time when you left late last year. Were you engaged in any development apart from this project?

A. I don't know. I think it is since 2014 or 2015
10 that I am not involved with any other project. I had a project that I was doing in Canetik but I got out of that over a year and a half two years ago.

Q. The company. I realize that you out of frustration divested your shares. But the company, Eco
15 Futures Belize Limited, that company was exclusively dealing with a development project, the Sanctuary Belize project, isn't that correct?

A. They are a development company. We we are not limiting ourselves to any one company. That was not
20 the intent at all.

Q. I am asking you are you were doing currently?

A. What I am doing?

Q. The Eco Futures Belize Limited what that company was doing.

25 A. It was developing --

Q. --the Sanctuary Belize project?

A. Yes.

Q. GPA. Do you know about any marketing they would have done for anybody apart from yourself?

5 A. I don't know what GPA markets other than for what
I was involved with.

 MR. CAVE: My Lord, those are my questions
for this witness.

 THE COURT: Any re-examination?

10 MR. WILLIAMS: Yes, My Lord, I do have a few
questions in re-examination.

RE-EXAMINATION OF MR. USHER BY MR. WILLIAMS.

 Q. Mr. Usher, I have a few questions I would like to
ask you this morning. My friend enquired of you
15 whether prior to Eco Futures Belize becoming the
developer. Eco Futures I think was formed in 2010.
Prior to it becoming the developer, were there other
developers who had attempted to work with SRWR to do
the development?

20 MR. CAVE: No, please, My Lord, I never asked
any questions about other developers who had attempted
to work with SRWR. I never asked that question and I
am willing for the Court to review whatever notes it
has. I didn't ask that.

25 MR. WILLIAMS: I think the question I am
referring to, My Lord, that I have here in my notes is
whether it was the first development arrangement as it
were between SRWR in relation to this project and Eco
Futures. In other words that is where it started at

5 least that was my understanding so I am asking the
witness whether if that was the first start of the
development in terms of whether the development started
before that arrangement. That is what I am trying to
clarify.

10 THE COURT: Perhaps I misunderstood
something. Wasn't Eco Futures formed just before they
signed the contract?

MR. WILLIAMS: SRWR was formed since 2003.
I believe some time in 2010 or there about Eco
15 Futures was formed and shortly after it was formed it
had the contract with SRWR called the Sanctuary Belize
project. So what I am trying to clarify whether that
is when the Sanctuary Belize project started or if it
started before that contract. That is the point I am
20 trying to clarify.

THE COURT: Is that clarified?

MR. CAVE: The re-examination is really
reserved for matters of ambiguity, matters of conflict
that the witness maybe required - - it is not to afford
25 an opportunity to ask questions afresh. It is not to
put examination-in-chief and I don't see any ambiguity
which arose as a result of the question which I asked.
It was simply directed to when the company was formed
which was the day before and when it entered into the

5 agreement. That is all, My Lord.

THE COURT: You can ask the question.

MR. WILLIAMS: In terms of the witness and the question that was asked and the witness response in terms of my notes what I am seeking to do --

10 THE COURT: Don't worry about what you are seeking to do because the witness is here. What was the question you wanted to ask?

MR. WILLIAMS: The question I wanted to ask was whether when that contract was signed if that is 15 when the Sanctuary Belize project began at the time of that contract.

THE COURT: You can ask that question.

MR. WILLIAMS: And that was the question I was asking.

20 Q. The question I wish to ask that the Judge has permitted me to ask you is whether the Sanctuary Belize project began just at the time of the contract between SRWR and Eco Futures?

THE COURT: No, that is leading. What is the 25 question?

MR. WILLIAMS: Well the question is when did that project began.

THE COURT: You said there is a statement which is a leading question.

5 Q. When did the Sanctuary Belize project began?

A. 2002 I think, 2003 somewhere in there with Dolphin Development as the developer at the time then Sanctuary Bay and then Eco Futures. So I had a team.

Q. My friend asked you the question do you still
10 have agreement with GPA, whether the agreement between Eco Futures and GPA was still subsisting.

THE COURT: Wasn't that answered?

Q. The answer was I think so. And my question to you is whether that agreement had a limited duration at
15 the time?

A. Yes, it had an expired date. I can't remember when it was but it had an expired date.

MR. CAVE: My Lord, this is precisely the issue I am trying to avoid. I had asked the witness
20 whether GPA still does marketing or whether there was still an agreement for GPA to do marketing for Eco Futures Belize Limited.

THE COURT: And then he said he didn't know because he had left and then you then changed the
25 question to then at the time he was there.

MR. CAVE: So it was not directed to a specific agreement.

Q. Mr. Usher, my friend asked you a number of questions concerning the alleged defamatory statements

5 that you have in the claim and as to the source of those things. In relation to first of all the IOSB, the second defendant there, I think it appeared that you were asked two different questions in terms of the Facebook page and in terms of the IOSB website or web
10 page. And my question is first of all in terms of the IOSB web page. Did you yourself go to that page?

A. The page, yes.

Q. The IOSB?

A. Yes.

15 Q. Did you read what was on that page?

A. That is what I have in here.

Q. Are you able to say how many times you have been to that page?

A. I have been a few times. I am not certain but I
20 have been a few times before. I can't say the amount of times.

Q. Let me ask you in relation to the Facebook reference information. You told the Court that the access was restricted. But you were not clear and I
25 would therefore ask you the question how you came into the information you presented in Court?

A. From the Facebook page that is secured we got it from somebody who is on the page, who is a member.

Q. That is how you got it?

5 A. Yes.

Q. My friend asked you a number of questions in relation to tax in relation to the transfer of the Caye in relation to the transfer of the 5600 acres and you said the consideration was tax. I need to enquire of you what tax were you referring to?

A. The tax I was referring to is the tax that the reserve incurs yearly.

Q. What tax is that?

A. That is the property taxes.

15 Q. That is property taxes?

A. Yes.

Q. What was peculiar about that tax why you say that was the consideration?

A. It is a burden for the reserve where the developers if they are developing it they should be taking up that responsibility. That was our trend of thought.

Q. It was a burden?

A. It's a burden.

25 Q. The land owner pay their tax?

A. Well the owners don't pay the tax for the pieces that are not being used, the reserve pays that.

Q. It was a big tax?

MR. CAVE: May I have one moment, please. I

5 just want for the purposes of the record please, My
Lord, to register my objection to that string of
questions that came and it is on the same basis that I
indicated earlier that these are not properly questions
for re-examination. No ambiguity arises in relation to
10 this. What my learned senior with respect is doing is
seeking to elicit new testimony, new evidence from this
witness, evidence that he had an opportunity to put in.
That is simply my objection, My Lord.

THE COURT: Did he say what tax it was?

15 MR. WILLIAMS: No, My Lord, he did not and
so appropriately I can clarify what that is.

THE COURT: Mr. Cave did he say what tax it
was?

MR. CAVE: I asked him specifically about the
20 taxes that were due on transfer. I think we went into
this at length because I even asked him who was to bear
the burden of that tax obligation. I think if the
Court reviews its notes it is very clear that we went
into this at length. He had every opportunity and he
25 even confirmed that the tax would be passed on to Eco
Futures. So what he appears to be doing right now is
testifying contrary to what he has testified already.

THE COURT: Doesn't that help you?

MR. CAVE: Well, it is not that I am saying

5 that I want help in relation to this matter. He has
already testified on the record.

THE COURT: You don't have to jump up to
everything, you know, Mr. Cave. If he is saying two
different things at the same time it harms him, doesn't
10 it?

MR. CAVE: That is my objection, My Lord.

MR. WILLIAMS: Obligated.

Q. Mr. Usher, you were directed to and questions
were put to you in relation to the FIU and to
15 laundering and you were asked where in the material was
there a reference to you or your company doing money
laundering. You recall that question?

A. Yes.

Q. I want to direct you to Tab 22, if you go to the
20 tab where you see the Facebook and IOSB. I think it is
22 where you see the ISOB in the margins and your
witness statement. In your witness statement it is the
Tab I?

THE COURT: This is Tab what?

MR. WILLIAMS: In the Bundle there, My Lord,
25 it is Tab 22. You found that?

A. Tab I.

Q. Go to tab I I think where the ISOB production is.

A. I have one page in tab I. He was referring to

5 this page and I told him there was only one.

Q. Tab H. You have a tab H?

A. I have a Tab H.

Q. Go to Tab H?

A. Okay.

10 Q. And at Tab H you go the 5th page.

MR. WILLIAMS: My Lord, that is in the Bundle at Tab 22 in the trial Bundle and it is the 5th page also. You see the ISOB and then the last page of that production.

15 A. Two lines on it.

Q. Two paragraphs. You see that?

A. Yes.

Q. Can you take a look at that paragraph there. Can you read it?

20 A. "Investigation of public records show that SRWR is not a registered non profit company with the Belize Financial Investigation Unit. (FIU) Belize requires that all non-profit companies register with FIU. FIU is an organization that is set up by Government of Belize
25 to crack down on money laundering. Compliance with the law enables Belize to avoid banking sanctions from the US and other countries for stopping money laundering in Belize."

Q. Where you got that from?

5 A. This is from the ISOB website.

Q. Mr. Usher, you were also asked a question about the Central Bank and exchange control. My question to you is, was anyone near your company at the time or yourself, anybody was charged with any exchange control
10 violation?

A. No, sir.

Q. My friend also put to you that the payment arrangement to pay proceeds through the marketing or the company GPA in the US he suggested to you that that
15 was an irregular commercial operation. My question to you, is, what do you understand, if anything, was the Central Bank enquiries that they made with you about regarding that?

A. Can you ask that question again Rodwell
20 because --

Q. What I am trying to find out from you because my friend asked you about it and he referred to a correspondence from the Central Bank when he asked you. What I am trying to find out from you was, did your
25 company seek exchange control approval for that practice?

A. Absolutely, yes.

Q. That is what I wanted to find out if you sought it?

5 A. We sought it. From the inception of the project we took everything back dated it and went right through everything.

Q. My final question here, my friend asked you about a statement I think it is paragraph 28 in your witness
10 statement where you said that all the three Claimants were involved in an enterprise for profit.

A. Right.

Q. But SRWR was itself a not for profit?

A. Right.

15 Q. But the project was intended to make a profit.

My question to you is, whether you and what is your understanding of the notion that SRWR is not for profit. What is your understanding since you said in the context that my friend asked you that all three
20 companies were engaged in this Sanctuary Belize enterprise to make money for profit.

A. SRWR as a not for profit and cannot issue dividends. The other companies that issue shares or that are for profit can issue dividends.

25 Q. That is your understanding of it?

A. That is my understanding of it, yes, one agreement.

MR. WILLIAMS: Okay thank you, Mr. Usher.

THE COURT: Thank you. You may step down.