

JUDGMENT 1, 1973



IN THE PRIVY COUNCIL

NO.16 of 1971

ON APPEAL FROM
THE COURT OF APPEAL OF
THE BAHAMA ISLANDS

B E T W E E N :

TEXACO ANTILLES LIMITED
(Defendants) Appellants

- and -

DOROTHY KERNOCHAN and
CLIFFORD LOUIS KERNOCHAN
(Plaintiffs) Respondents

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
28 MAY 1974
25 RUSSELL SQUARE
LONDON W.C.1

CLIFFORD TURNER & CO.,
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London,
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Solicitors for the Appellants

STEPHENSON HARWOOD & TATHAM,
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Solicitors for the Respondents

IN THE PRIVY COUNCILNo.16 of 1971

ON APPEAL FROM
THE COURT OF APPEAL FOR THE BAHAMA ISLANDS

B E T W E E N :

TEXACO ANTILLES LIMITED.. Appellants
(Defendant)

- and -

DOROTHY KERNOCHAN and
CLIFFORD LOUIS KERNOCHAN Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No.16 of 1971

ON APPEAL FROM

THE COURT OF APPEAL OF THE BAHAMA ISLANDS

B E T W E E N :

TEXACO ANTILLES LIMITED
(Defendants) Appellants

- and -

DOROTHY KERNOCHAN and
CLIFFORD LOUIS KERNOCHAN
(Plaintiffs) Respondents

10

RECORD OF PROCEEDINGS

NO. 1

AMENDED WRIT OF SUMMONS

Amended this 22nd day of March A.D. 1968 without
leave pursuant to the Rules of the Supreme Court
Order 20, Rule 3.

In the
Supreme
Court

—
No.1

Amended Writ
of Summons

BAHAMA ISLANDS 1968
IN THE SUPREME COURT No. 22

22nd March
1968

Equity Side

20 B E T W E E N : DOROTHY KERNOCHAN Plaintiff

- and -

~~ANJASK COMPANY LIMITED~~
~~and~~ TEXACO ANTILLES
LIMITED Defendants

ELIZABETH THE SECOND, by the Grace of God, of the
United Kingdom of Great Britain and Northern Ireland
and of Our other realms and territories Queen, Head
of the Commonwealth, Defender of the Faith:

30

TO 1. ANJASK COMPANY LIMITED whose Registered Office
is situate in the Chambers of Mr. Foster L.
Clarke, Bay Street, Nassau, Bahamas and

In the
Supreme
Court

2. **TEXACO ANTILLES LIMITED** whose Registered
Office is situate in Sandringham House,
Shirley Street, Nassau, Bahamas.

—
No.1
Amended Writ
of Summons

WE COMMAND YOU that within 8 days after service of
this writ on you, inclusive of the day of service, you
do cause an appearance to be entered for you in an
action at the suit of

DOROTHY KERNOCHAN

22nd March
1968
(continued)

and take notice that in default of your so doing the
Plaintiff may proceed therein, and judgment may be
given in your absence.

10

WITNESS the Honourable Mr. **JUSTICE CUNNINGHAM SMITH**
Our Justice of our Bahama Islands, the 23rd day of
JANUARY in the year of Our Lord One thousand Nine
hundred and Sixty-eight.

J.K. BROWNLEES
REGISTRAR

NOTE:- This writ may not be served more than 12
calendar months after the above date unless renewed by
order of the Court.

20

The Defendant may enter an appearance in person
or by an attorney either (1) by handing in the
appropriate forms, duly completed, at the Registry of
the Supreme Court, in the City of Nassau, or (2) by
sending them to that office by post.

AMENDED STATEMENT OF CLAIM

The Plaintiff's Claim is for damages for breach of
Restrictive Covenants contained in a Conveyance dated
the 14th day of July, A.D., 1966 made between American
Investment Company Limited of the one part and the
first defendant named herein of the other part and
recorded in Volume Number 1010 at pages 128 to 136 and
for an injunction to prevent the defendants and/or
their Agents and Servants from erecting a Gas Station
or Public Garage on Lots 13-18 inclusive of Block 3 in
the Sub-division known as and called Westward Villas
(hereinafter called the said Sub-division) in the
Western District of the Island of New Providence.

30

PARTICULARS

~~1. --- The Plaintiff is a landowner in Block No. 3 of the
said Sub-division.~~

40

2.---By a conveyance dated 14th July, A.D., 1966, made between American Investment Company Limited of the one and the first Defendant named herein the above mentioned lots were conveyed to the said first named defendant subject to certain restrictive covenants therein contained.

In the
Supreme
Court

—
No. 1

3.---Restrictive Covenant No. 4 contained (inter alia) that no machine shop, public garage or manufacturing establishment will be permitted on any of the lots of the said Block No. 3 in the said Subdivision.

Amended Writ
of Summons

22nd March
1968
(continued)

4.---By an alleged agreement for sale date unknown but purported to be made between the defendants hereto it has been stated that the first named defendant will convey to the second named defendant subject to the terms and conditions therein contained.

5.---On or about the 9th January, A.D., 1968 the Defendants and/or their Agents and Servants commenced the erection of what is supposed to be a Public Garage or Gas Station on the said lots numbered 13-18 inclusive of Block number 3 in the said Subdivision in breach of the said Restrictive Covenants.

6.---The defendants and/or their Agents and Servants intend unless restrained from so doing to continue to commit the breach of the said Restrictive Covenants by the erection of the said Public Garage or Gas Station.

7.---The Plaintiff alleges that a Gas Station or Public Garage in the said Block would be the cause of nuisance to her and other land owners in the said Block No. 3 and would have the effect of devaluing the properties in the said Subdivision as such lots were laid out as residential except certain lots specified for commercial use and on which hotels and apartment houses or stores for the sale of provisions or other merchandise are permitted to be built.

8.---And the Plaintiff claims an injunction to restrain the Defendants and/or their servants and agents from building and operating the said Gas Station or Public Garage upon the said lots the erection of which is specifically exempted.

In the
Supreme
Court

No.1

Amended Writ
of Summons

22nd March
1968
(continued)

~~The Plaintiff claims:~~

- ~~1.---An injunction to restrain the defendants and/or their servants and agents from erecting such a Gas Station or Public Garage upon the said Block No.3 in the said Sub-division.~~
- ~~2.---Damages.~~
- ~~3.---Costs.~~
- ~~4.---Such other relief as the court thinks fit.~~

~~Attorney for the Plaintiff~~

PARTICULARS

10

1. By a Conveyance dated the 5th May 1927 and made between W.E. Brown Land Company, Limited (hereinafter called the "Company") of the one part and J. Baird Albury (hereinafter called "Mr. Albury") of the other part the property therein described and known as Lots 15 and 16 of Block 3 of Westward Villas Sub-division and First and Second Addition Westward Villas (hereinafter called "the said Subdivision") was conveyed to Mr. Albury in fee simple subject to the covenants thereafter contained.

20

2. By the said Conveyance Mr. Albury covenanted with the Company for the benefit and protection of the adjoining property of the Company or any lots forming a part or parts thereof and so as to bind so far as might be the said property thereby conveyed into whosoever hands the same might come that Mr. Albury and the persons deriving title under him would at all times thereafter observe and perform inter alia the following restrictions which were set forth in the Schedule to the said Conveyance, namely:

30

No more than one private residence and one garage or one combined garage and servants' quarters shall be built on any lot except on the lots in Block Two (2) to Five (5), inclusive. The Company reserves the right, however, to remove the restrictions from any or all of the lots of the said Blocks Two (2) to Five (5), inclusive, to allow the building upon them of hotels or apartment houses or stores for the sale of provisions or other merchandise, but said stores shall be permitted to be built

40

only on the Northern half of Blocks Three (3) and Four (4). No machine shop, public garage or manufacturing establishment will be permitted on any of the lots of Westward Villas sub-division and First and Second Addition Westward Villas aforesaid.

In the
Supreme
Court

—
No.1

10 3. By the said Conveyance referred to in paragraphs 1 and 2 above the Company also covenanted with Mr. Albury that the Company and Mr. Albury respectively and all persons deriving title under them respectively would at all times thereafter observe in respect of the lots of land vested in them respectively, all the conditions and restrictions set forth in the Schedule to the said Conveyance, it being the intention of the parties that the said conditions and restrictions should be mutually enforceable by and against all owners for the time being of the said lots in the said Sub-division.

20

Amended Writ
of Summons

22nd March
1958
(continued)

4. The Plaintiff is the owner in fee simple of Lot 39 and the Eastern half of Lot 40 in Block 3 being parts of the said Subdivision entitled to the benefit and protection of the restrictions set out in paragraph 2 above.

30 5. The Defendant is in possession of the said Lots 15 and 16 and of Lots 13, 14, 17 and 18 of Block 3 of the said Subdivision (having acquired the same with notice of the said restrictions by virtue of a Conveyance dated the 12th February, 1968 and made between Anjask Company Limited of the one part and the Defendant of the other part).

6. Both the Plaintiff and the Defendant have derived title to their respective lots from the Company which prior to the sale of the above lots laid out the said Subdivision in lots subject to restrictions which were intended to be imposed on all of them under a building scheme.

40 7. Alternatively the lots now owned respectively by the Plaintiff and by the Defendants were all vested in Chapmans Limited at one and the same time which Company conveyed the said lots (which eventually came into ownership of the Plaintiff and Defendants respectively) subject to the covenants and restrictions set out in paragraph 2 above.

8. In breach of the said restrictions the

In the
Supreme
Court

Defendant during the first part of 1968 commenced and continued the erection of a Public Garage or Gas Station on the said Lots 13, 14, 15, 16, 17 and 18 of Block 3 of the said Subdivision.

No.1

Amended Writ
of Summons

9. By reason of the Defendant's said breach of the said restrictions the Plaintiff has suffered damage and the Plaintiff's use and enjoyment of her said property has been seriously threatened.

22nd March
1958
(continued)

10. The Defendant threatens and intends unless restricted by the Court to continue to commit breaches of the said restrictions as aforesaid.

10

11. In the alternative by reason of the facts alleged in paragraph 8 above, the Defendant, its servants or agents will cause or permit excessive noise and disturbance in and about the Plaintiff's property whereby the Plaintiff will suffer damage and her use and enjoyment of her property will be seriously interfered with.

And the Plaintiff claims:

(1) An Injunction to restrain the Defendant by itself or its servants or agents or otherwise from building or permitting to be built the said Gas Station or Public Garage or from carrying on or permitting to be carried on on the property of the Defendant the business of a Gas Station or Public Garage or any other trade or business in breach of the said restrictions.

20

(2) Further or other relief.

(3) Costs.

JAMES M. THOMPSON

30

Attorney for the Plaintiff.

This writ was issued by James M. Thompson of Chambers, Frederick Street, Nassau, Bahamas, Attorney for the said Plaintiff, who resides at Westward Villas, Western District, New Providence, Bahamas.

NO. 2

DEFENCE

In the
Supreme
Court

IN THE SUPREME COURT OF THE BAHAMA ISLANDS
Equity Side

1968
No. 22

—
No.2

B E T W E E N : DOROTHY KERNOCHAN

Plaintiff

Defence

- and -

ANJASK COMPANY LIMITED and
TEXACO ANTILLES LIMITED

Defendants

28th March
1968

D E F E N C E

10 1. The Defendant admits that by a Conveyance dated the 5th of May, A.D. 1927 referred to in Paragraph 1 of the Plaintiff's Statement of Claim the property described in Lots Numbered 15 and 16 of Block No.3 of Westward Villas Subdivision was conveyed to the said J. Baird Albury in fee simple subject inter alia to the restrictions referred to in Paragraph 2 of the Statement of Claim. The Defendant will refer to the Conveyance at trial for its full contents and effect.

20 2. As to Paragraph 2 of the Plaintiff's Statement of Claim the Defendant says that the covenant sought to be enforced was of a personal nature and did not become binding on the hereditaments conveyed so as to run with the land.

3. As to Paragraph 3 of the Plaintiff's Statement of Claim the Defendant repeats Paragraph 2 of its Defence and says that the company expressly reserved to itself the right to waive all the restrictions in respect of those lots in Blocks 2 to 5, inclusive.

30 4. As to Paragraph 4 of the Plaintiff's Statement of Claim the Defendant does not admit the statements therein contained.

40 5. As to Paragraph 5 of the Plaintiff's Statement of Claim the Defendant says that it is the fee simple owner in possession of Lots Numbered 15 and 16 and of Lots Numbered 13, 14, 17 and 18 of Block 3 of Westward Villas Subdivision but denies that Lots Numbered 13, 14, 17 and 18 of the said Block No.3 are subject to restrictive covenants the Purchaser having purchased the said lots free from any restrictions or conditions whatsoever and the Defendant will refer to a conveyance dated the 3rd day of April, A.D.1935 and made between W.E. Brown Land Company Limited of the

In the
Supreme
Court

one part and The Ocean and Lakeview Company Limited of the other part at the trial, through when the Defendant claims title.

—
No.2

6. The Defendant does not admit Paragraph 6 of the Plaintiff's Statement of Claim.

Defence

7. As to Paragraph 7 of the Plaintiff's Statement of Claim the Defendant admits that the lots owned respectively by the Plaintiff and the Defendant were vested in Chapmans Limited but does not admit that they were subject to restrictive covenants.

28th March
1968
(continued)

10

8. As to Paragraph 8 of the Plaintiff's Statement of Claim the Defendant denies that in breach of the said restrictive covenants that the Defendant has commenced nor continued the erection of a public garage within the meaning of the restrictive covenants and says that a filling station which it intends to erect is not subject to the restrictive covenants as drawn by the W.E. Brown Land Company in the year 1925 or otherwise.

9. Further as to Paragraph 8 of the Plaintiff's Statement of Claim the Defendant says that in any event certain of the restrictive covenants are unenforceable as being void and against public policy and that all of the covenants having been enforced equally the said restrictive covenants are null and void and of no effect.

20

10. The Defendant denies Paragraph 9 of the Plaintiff's Statement of Claim.

11. The Defendant denies Paragraph 10 of the Plaintiff's Statement of Claim.

30

12. If the Defendant has committed or intends to commit a breach of the restrictive covenants referred to in the Plaintiff's Statement of Claim (which is not admitted) it says that the Plaintiff purchased her lot with notice that the lots now owned by the Defendant could be used commercially and that there has been such a change in the general character of the neighbourhood that the object for which the said covenant was entered into namely the preservation of the neighbourhood as a residential district and the preservation of the value of residential property as such has completely disappeared the said neighborhood having long ceased to be purely residential to such an extent that it would be capricious and

40

inequitable for the Plaintiff to enforce the said covenant having regard to all the circumstances and the facts in connection with Lots 13, 14, 17 and 18.

In the
Supreme
Court

13. The said change in the character of the neighborhood was brought about by the acts and omissions of the Plaintiff and her predecessors in title in the following circumstances:

—
No.2

Defence

10

The said covenants were created as a part of a building scheme comprising the Westward Villas Subdivision and First and Second Addition Westward Villas which was developed by sales of approximately 100 lots during the years 1925 to 1935 on each of which sales the covenant complained of was imposed on the respective purchasers by the owners of the said Westward Villas Subdivision. From the year 1935 onwards when the W.E. Brown Land Company conveyed the balance of the lots amounting to approximately 420 lots free from any restrictive covenants whatsoever breaches of the said covenants in the immediate vicinity of the Defendant's said land have been increasingly committed and continued with the knowledge and acquiescence of the Plaintiff and her predecessors in title.

28th March
1968
(continued)

20

PARTICULARS OF BREACHES

30

14. The Plaintiff and her predecessors in title have acquiesced in breaches of restrictive covenants in respect of Lots 40, 41 and 42 of Block 3 of the said Westward Villas Subdivision in that they have permitted multi-residential dwellings to be erected.

15. The Plaintiff or her predecessors in title have permitted breaches in respect of Lots 27, 28, 29 and 30 of Block 3 of Westward Villas Subdivision in that they have permitted multi-residential dwellings to be erected and the sale of liquor in Burns House and in the Swank Club.

40

16. The Plaintiff or her predecessors in title have permitted breaches in respect of Lots 33 and 34 of Block 3 of Westward Villas Subdivision in that they have permitted the construction of multi-residential units.

17. The Plaintiff or her predecessors in title have permitted breaches in respect of Lots 39 and 40 in Block 4 of Westward Villas Subdivision in that they have permitted construction of multi-residential units.

In the
Supreme
Court

No.2

18. The Plaintiff or her predecessors in title have permitted breaches in respect of Lots 8, 9, 10 and 11 in Block 4 of Westward Villas Subdivision in that they have permitted the construction of a machine shop, warehouse, sewage treatment plant and a garage.

Defence

28th March
1968
(continued)

19. The Plaintiff or her predecessors in title have permitted breaches in respect of Lots 20 and 21 and 3 and 4 of Block 5 of Westward Villas Subdivision in that they have permitted the construction of multi-residential dwellings.

10

20. By reason of the said change in character of the neighborhood and of the acquiescence of the Plaintiff the said restrictive covenant complained of is no longer capable of being enforced.

21. As to Paragraph 11 of the Plaintiff's Statement of Claim the Defendant denies that by itself its servants or its agents it will cause or permit excessive noise or disturbance in or about the Plaintiff's property and says that the proposed filling station will be of the highest modern standards, attractively landscaped and soundproofed which will be used principally for the sale of petroleum and lubricants but that no repair of vehicles will be carried out on the Defendant's property.

20

22. Save as hereinbefore expressly admitted each and every allegation contained in the Plaintiff's Statement of Claim is denied as if it had been expressly traversed herein.

DATED this 28th day of March, A.D. 1968.

30

E. PATRICK TOOHE.

Attorney for the Defendant.

NO. 3

CONSENT OF CLIFFORD LOUIS KERNOCHAN

IN THE SUPREME COURT OF THE BAHAMA ISLANDS 1968
 Equity Side No. 22
B E T W E E N : DOROTHY KERNOCHAN Plaintiff
 - and -
 TEXACO ANTILLES LIMITED Defendant

In the
Supreme
Court

No.3

Consent of
Clifford Louis
Kernochan

31st March
1968

CONSENT

10 I, Clifford Louis Kernochan, hereby consent to
be added as Plaintiff in this action.

DATED the 31st day of March 1968.

(signed) Clifford Louis Kernochan
Clifford Louis Kernochan

NO. 4

NOTICE OF CHANGE OF THE PLAINTIFFS' ATTORNEY

BAHAMA ISLANDS 1968
 IN THE SUPREME COURT No. 22
 Equity Side

Notice of
Change of the
Plaintiffs'
Attorney

20th May
1968

20 B E T W E E N : DOROTHY KERNOCHAN and
 CLIFFORD LOUIS KERNOCHAN
Plaintiffs
 - and -
 TEXACO ANTILLES LIMITED
Defendant

NOTICE OF CHANGE OF ATTORNEY

TAKE NOTICE that Messrs. McKinney, Bancroft &
Hughes of the Boyle Building, Bank Lane, Nassau,

In the
Supreme
Court

Bahamas have been appointed to act as Attorneys of
the above-named Plaintiffs in place of Mr. James
Maxwell Thompson.

Dated the 20th day of May 1968.

No.4

McKinney Bancroft & Hughes

Notice of
Change of the
Plaintiffs'
Attorney

Attorneys for the Plaintiffs

20th May
1968
(continued)

TO: The Defendant Texaco Antilles Limited
and to its Attorney E. Patrick Toothe,
Chambers, 6th Floor, Trade Winds Building,
Bay Street, Nassau, Bahamas.

10

Plaintiffs'
Evidence

JUDGE'S NOTES

1st April, 1968

Paul Bethel with him Mr. Thompson
Toothe for Defendants.

Bethel: There has been no discovery. See previous
order.

Toothe: Have plaintiffs in their title right to
enforce restrictive covenants?

Proof: (1) Building scheme
(2) Both are in the ambit of scheme.

20

Bethel: I am prepared to go on. Apply - Lot 39 and
one half of Lot 40 in Block 3 - owned by
Mrs. Kernochan and her husband. I apply to
join Mr. Clifford Louis Kernochan as joint
plaintiff with necessary amendments
throughout.

Application is granted.

Bethel: Texaco Antilles Limited - sole defendant
because of conveyance. Westward Villas -
subdivision of Lots - restrictions -
building scheme. Gas station or garage by
defendant a breach of the Restriction.

30

1. Restrictions enforceable today?

- 2. If so - and valid - is one being breached by the proposed erection of a filling station.
- 3. Whether, irrespective of restrictive covenants, there is a nuisance in the area.

In the Supreme Court

Plaintiffs' Evidence

NO. 5

No.5

EVIDENCE OF D.L. BROWN

D.L. Brown
Examination

DAVID LESTER BROWN sworn.

1st April
1968

10 I live in western district of Nassau. I know the plaintiffs - for last 15 years. I am the senior Government Assessor - 15 years experience and practice. I am a Real Estate Agent. I produce my valuation and report of the plaintiffs' property - Ex. 'A'. Shewn plan - of Westward Villas - I mark the area which I have assessed. The proposed filling station would cover Lots 13-18 inclusive. I produce this plan - Ex. 'B'.

20 The average person buying a house in that area would not consider a service station immed. on the back boundary anything but a disadvantage because of potential noises and danger of gasoline explosion. The house is so designed that the patio and outdoor areas would be facing the station - even if a wall was put up the house value would not be enhanced. Prevailing winds easterly - S.E. direction. In the winter - from N.W. and N.E. I served with Shell Company (Oil) for 15 years as General Manager and had a great deal of experience of erecting service stations - here and in Bermuda. I would say not customary for filling stations to be erected in My firm has been commissioned to buy petrol filling station sites in Bahamas. I was aware of the restrictive covenants in the Westward Villas sub-division - I did not bother to offer for sale any site in this area - as I felt it would be a waste of time. I have a copy of restrictive covenants in the major subdivisions in this island and we refer to them all the time: Restrictive Covenant No.4 in the schedule referred to in the Conveyance W.E. Brown Land Company Ltd. to Sherman dated 1st April 1927, - I had in mind. Difficult to run a service station without some garage work being done. All

30

40

In the
Supreme
Court

the others in the island do. Nearly all filling stations do garage work. I know what Texaco Stations do: I would say the majority of them do repair work.

Plaintiffs'
Evidence

No.5

D.L. Brown

Examination

1st April
1968
(continued)

Cross-
examination

CROSS-EXAMINED

Shewn another plan of the same area:

I have been 17 years in real estate business. Familiar with the subdivision and Cable Beach area. 17 years ago the areas shewn coloured green - commercial buildings - there were three:-

10

1. Cable Beach Manor Apartments (Lot 31)
2. Balmoral Club (Lots 29 & 28)
3. Island Club (Lots 35 & 36).

Area of Cable Beach will be developed - apartment buildings rather than private residences - subject to Town Planning. Attitude of Town Planning - Cable Beach area - has committed itself - so long as sufficient width - apartments may be built. North side of West Bay Street will be commercialised - more and more. No filling station in immediate vicinity. If no restrictive covenants - I feel we have too many stations at the present time. I don't think any Oil Company can justify a filling station in this area apart from any restrictive covenants. Not a good area to put in a Sewerage Disposal Plant. There is such a plant - in block 4 - approx. Lots 8, 9 & 10. That would be about a year ago - a shocking disgrace. On Lots approx. 8, 9 & 10 there is a laundry - I think the next building is a machine shop. External appearance of Lots 8, 9, 10, 11 - are being filled in with loose fill. Lots 8, 9, 10 & 11 - are subject to Restrictive Covenants. Moving west to

20

30

Lot No.3 - on Lots 27/29, 29 & 30 there are erected an apartment building with shops underneath. Burns House did have a shop there. The Swank Club is there - sells liquor (a night spot). Plan of Lot 3 separates right of way between Plots 13-18 of Lot and Plot 35 & 40 - there is a way set aside to service the blocks for electrical and telephone. I was aware of the road (20') wide 'reservation', which is "no man's land". Appleyard's house is surrounded with a wall. A wall would not detract from the value - between the filling station and plaintiff's house. Plaintiff might not like a high wall. The shrubbery is not thick - one could see the filling station. If the planting was increased the wall could somewhat be hidden. Prevailing wind is more south to east than east - from the south east the plaintiffs would not be subject to fumes - prevailing winds would blow the fumes away. Filling stations in Shirley Street - but not a residential area. I left oil business in 1950: first hand experience finished then. Familiar with Code of Board of Trade - in England - for filling stations. I buy in Palmdale - I have been to a foodstore - I have not been in rear - I have been in City Meat Market. I have noticed the refuse - lying around - a disgrace.

\$50000 - valuation - assessment of the land - I would have to refer to my notes - say \$15000 - for the raw land. The house is approximately 10 years old - in very good condition now. Sq. footage of building - type of roof - flooring - the base walls and the land. I was not paid by the plaintiffs for this valuation - I have been very friendly with them. In my term of office for Shell no filling stations were erected: Bermuda - Holland - Canada - U.S.A. - experience of service station operators - not in the Bahamas, except in advisory capacity.

A highway is coming through the area - will take some of the front Lots of Westward Villas subdivision.

RE-EXAMINED

I have sold quite a few houses in Westward Villas subdivision: mostly private residences - not sold any for apartment buildings or for commercial use. North side of Bay Street - different from Westward Villas - don't know of any covenants restrictions. The same restrictive covenants as in

In the
Supreme
Court

Plaintiffs'
Evidence

No.5

D.L. Brown
Cross-
examination

1st April
1968
(continued)

Re-
examination

In the
Supreme
Court

Westward Villas do not apply in Cable Beach
Areas - which is under the Town Planning
restrictions.

Plaintiffs'
Evidence

No.5

D.L. Brown

Re-
examination

1st April
1968
(continued)

No.6

NO. 6

EVIDENCE OF F. GARROWAY

F. Garroway

Examination

FRANCIS GARROWAY sworn

1st April
1968

Surveyor Crown Lands Office Nassau. There is a
filed plan of Westward Villas Areas - Plan 21(c) -
I produce this plan - Ex. 'C'.

No. 7

NO. 7

10

D. Kernochan

EVIDENCE OF D. KERNOCHAN

Examination

DOROTHY KERNOCHAN sworn

1st April
1968

I own property in Westward Villas - Lot 39 and
half of Lot 40 in Block 3. I bought this property
six years ago, jointly with my husband. Conveyance
to my husband and me - from Carl Livingstone -
produce - Ex. 'D'. Bundle put in - Ex. 'E' (and
List) - No.1 of the List is missing. We felt it a
neighbourhood - residential - and nothing but safe.
Expected possible apartment block and small shops.
Took Mr. Livingstone's word. Never understood that
I could put up anything I wanted. Carl Livingstone
would not have put a house up - if not a good place
in which to live. There were no petrol stations or
garages at the time I bought. We bought the house
already on the land. To the west of where we bought
was vacant - and is now an apartment house. We have

20

lived and worked here for 22 winters and in summer in to States. The apartment is not objectionable in any way - low, quiet and nice people. Apartment went up during our absence from the Colony.

In the
Supreme
Court

10 In January of this year - activity to our north - we had rented our house for the summer to Mr. & Mrs. Pinder and we had a note that there was going to be a gas station built behind our house. I would say the digging for the erection began two days after our return - about 8/1/68. I was upset: went to G. Kelly, Solicitor: he mentioned "restrictive Covenant" - I wrote to the Town Planning Officer, on Mr. Kelly's advice. I also got up a petition - in a hurry - 54 signatures. I produce copy of letter, written to Town Planning Officer - Ex. 'F'. I wrote again on 12/1/68 to Town Planning with Petition - Ex. 'G'. Produce replies from Town Planning Dept. and Ministry of Works - Ex. 'N' & 'J'.
20 On the petition - signatures are owners/occupiers - and across the road on the north side - there are three neighbours - don't know if they are bound by the same restrictive covenants.

Plaintiffs'
Evidence

No.7

D. Kernochan

Examination

1st April
1968

(continued)

30 The Petition was got up in a hurry because digging was begun. A public garage service filling type of building was going to be erected - if there is any work to be done at a filling station - that makes it a garage. Any filling station I have been to in Nassau does car work. I have had oil filters changed - horns fixed - tubes - batteries charged - bodywork - all these things I have had done at a gas station. The proposed filling station would constitute a nuisance - at first they may be pretty and then end up junky (flowers may be put up - Texaco - was open all day yesterday (Sunday) and there may be all night service or fillings - and lights are on all night - bright lights. All the nearby residents are agreed with what I say. Every petrol station is a potential danger one near Windsor has already burnt up. No difficulty in
40 buying gas in stations of Nassau. Shewn Conveyance to Ocean & Lake View Company by Brown Land Company - 3/4/35 (Ex. 'K') - Plans - Block 3 that is where my property is. Filling station, immediately to our north. After the Petition - Texaco man came to see us - Mr. Von Schilling - of Texaco came to see us. He said not to worry - he planned to put up a wall - 7 feet in height - and 10 feet from our back fence. He said he would put up a wall in the middle of

In the Supreme Court
 Plaintiffs' Evidence
 No.7
 D. Kernochan

the 20 foot reservation (Utility Road). The digging for the tank is 15 feet from our boundary - and two side trenches come within 6-7 feet of our property - on the western end. Plan - 2 on 1935 deed - the blocks on the north - labelled 'Commercial' - and 'apartments' written on it. Deed of 3/4/35 put in and marked Ex. 'K'. There is a laundry opposite the Balmoral Club: I don't know of any machine shop - other than the laundry. I did not know of any sewerage plant in Westward Villas until I was told. - in January 1968.

10

Examination

1st April
 1968
 (continued)

Cross-examination

CROSS-EXAMINED

Fire at Windsor station - I didn't know that it was a tanker truck, that was on fire.

Fire at Mackey Street filling station - was a rubber fire - could be.

I paid £12,500-0-0 or £13000-0-0 for our house in 1962. Kelly - solicitor represented us at the purchase.

Went to the laundry April 1967. Saw no machine shop. Sewerage was done - I couldn't do anything. Lots 13, 14, 17 & 18 I don't know but Lots 15 & 16 are subject to restrictive covenants because they are not private, if that is what private means.

20

There are plenty of gas stations in Nassau. I've not been to every one. Unlikely that some are only selling gas and oil. Lights are on every night - even if no business. Mr. Von Schilling said he would build a wall - 7' high. I suggested it be built higher - a foot or two - but we were not acquiescing. I don't remember if he said he would hide the wall with flowers. There are three bedrooms in my house they are all on the eastern side of the house: right now we are using the front and our guests at the back. Living room patio - daughter's bedroom (the northern one) would be affected by lights. Mr. Von Schilling sketched filling station for us - I think the filling of gas would be about 100' from our back boundary.

30

Shewn a Plan - Apartment begins in Lot 40.

Immediately to our west there is an apartment building and on the east - there is another - three storeys high. I don't know if there is a new apartment in Plot 4. I know there is going to be a 4 line highway coming on the front of Westwards Villas. I would have 'wept' if I had seen the filling station up - for the first time.

In the
Supreme
Court

Plaintiffs'
Evidence

No.7

D. Kernochan

Cross-
examination

1st April
1968
(continued)

NO. 8

No.8

10

EVIDENCE OF C.L. KERNOCHAN

C.L. Kernochan

CLIFFORD LOUIS KERNOCHAN sworn

Examination

I am husband of last witness. We both own the property - house in question. The proposed gas station has every possibility of becoming a nuisance - the gas and oil would be a potential hazard to our house - and I've been told my insurance premium might go up. Fumes and smells might arise according to where the wind blows. And noise of cars -

1st April
1968

20

I don't know of any gas stations which serve gas and oil only.

CROSS-EXAMINED

There is a bell - with automic like inflation and perhaps others. Tyre changing could be noisy. Gas chamber is a factor - also if one station starts up - another may, and so on. On north side of Bay Street - apartments - multi residential.

30

Swank Club - liquor shop - former before we came and the liquor shop after. I have just heard about the sewerage tank - one gets a 'whiff' from the road. Don't know about a machine shop in the area. Sewerage was put up without our knowledge.

In the
Supreme
Court

RE-EXAMINED

Lot of work done on Balmoral Club.

Plaintiffs'
Evidence

No.8

C.L. Kernochan

Re-
examination

1st April
1968

No.9

NO. 9

N. Higgs

EVIDENCE OF N. HIGGS

Examination

NEWTON HIGGS sworn

1st April
1968

Attorney-at-Law Nassau. Practising 23 years.

Lot 39 and half 40 - I have looked into the title - Bundle - Ex. 'E' I have seen the original document to Mr. Hilton - it was in my possession. It was a printed form of the W.E. Brown Company Conveyances - similar to one shewn me - put in Ex. 'L' (Brown Company - to Butler).

10

Conveyance to Hilton - 25th March 1954 - note - by Brown dated 17th May 1933 had been loaned by me to Mr. Ernest Callender - he has not been able to return it to me. The deed was executed but not recorded. It lacked proper consular affidavits, to my recollection.

Conveyance Hilton to Chipman - refers to restrictive covenants - I would take it as imposing the same restrictive covenants as in Ex. 'L'.

20

Shewn Ex. 'K' - I would assume the lots uncoloured have been disposed of either previously or simultaneous Conveyance: Plots 39 & 40 were subject to restrictions as contained in the printed form: Lots 15 & 16 of Block 3 - are uncoloured and therefore conveyed earlier. Conveyance of 5th May 1927 - W.E. Brown Land Company Limited and Dr.

Albury of lots 15 & 16 of Block 3 - I produce -
Ex. 'M'. Attached to Ex. 'M' is another document -
American Investment Company Limited and Anjask
Limited of - Lots 13, 14, 15, 16, 17 & 18 of Block 3
of Westward Villas Subdivision.

In the
Supreme
Court

Plaintiffs'
Evidence

No. 9

N. Higgs

Examination

1st April
1968
(continued)

Cross-
examination

CROSS-EXAMINED

Shewn Ex. 'K' - Lots 13, 14 & 17 & 18 of Block
3 are conveyed free from any restrictive covenants -
it would appear from that conveyance (K).

10 RE-EXAMINED

Re-
examination

The Conveyance refers to a plan.

2nd April, 1968

Bethel: Subject to the production of documents and a
plan, I propose calling no other evidence.

DEFENDANTS' EVIDENCE

Defendants'
Evidence

NO. 10

No.10

EVIDENCE OF A.B. MALCOLM

A.B. Malcolm

ALFRED BRUCE MALCOLM sworn

Examination

20 Garage owner and Merchant Nassau. Since 1922
I have been in gas filling service - 46 years in the
business. In 1925 a garage was applied to my
business, doing repairs - body and engine of cars.
A license is required to operate a garage - and to
sell gas and oil - (separate licenses).

2nd April
1968

In the
Supreme
Court

Malcolm's Western Service Station - there are houses in the area. I operate just a filling station there. I have never had complaints - noises and fumes.

Defendants'
Evidence

I operate a garage and filling station in the City. In the City there are residential places in the immediate vicinity - never had any complaints over noise - smells etc.

No.10

A.B. Malcolm

Examination

2nd April
1968
(continued)

Cross-
examination

CROSS-EXAMINED

I own residences around my Western Service Station - I rent them out: this applies to my City Station as well. I have had the Western Service Station 20 odd years: 3 years ago I did repair work - now I do not. Garage is separate from a filling station - Dept. for repairs etc. At the West filling station - I do some minor repairs - tyres - bulbs - windscreen wipers - sale of. It has always been "Malcolm's Western Service". There is no area - for repairs - I have a warehouse - in which I store cars for summer. Oiling and greasing done at the Western Service Station. All such repair work as I have described goes along with gas filling services - I think all do such "work" definitely.

10

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Re-
examined

RE-EXAMINED

I don't own all the houses around the Western and City service centres. I don't own Victoria Apartments, either!

No.11

NO. 11

K.W. Wadman

EVIDENCE OF K.W. WADMAN

Examination

KENNETH WILLIAM WADMAN sworn

30

2nd April
1968

I am a Land Surveyor - I live in New Providence. I prepared a plan shewing the land usage

at Westward Villas and Cable Beach and produce it.
Ex. 1.

In the
Supreme
Court

Defendants'
Evidence

No.11

K.W. Wadman

Examination

2nd April
1968
(continued)

Cross-
examination

CROSS-EXAMINED

The land usage has been personally investigated by me. Area north of Bay Street - Cable Beach. Restrictions on Westward Villas subdivision, might not necessarily affect Cable Beach. '(2 subdivisions on Ex. 1).

10

Plots 8, 9, 10 & 11 - within them is repair shop and a garage used for maintenance of vehicles of Balmoral (private).

RE-EXAMINED

Re-
examined

Also in the same lots is a sewerage plant. I smelled nothing. Repair shop - not a big thriving business - but I saw 6 or 8 vehicles about.

NO. 12

No.12

EVIDENCE OF R.C. THOMPSON

R.C. Thompson

RICHARD CHESTER THOMPSON sworn

Examination

20

Real Estate Broker and Land Investor. Also a Government Assessor. I have been in business about 18 years. Am familiar with Westward Villas - Cable Beach area. Shewn Ex.1 - to the north side (green areas) - all the north side Cable Beach Area is destined for apartments and hotels - when present residences are sold - they are sold more frequently

2nd April
1968

In the Supreme Court
 ———
 Defendants' Evidence

No.12
 R.C. Thompson

Examination
 2nd April 1968
 (continued)

Cross-examination

to hotel and apartment business. I would think the same applies to the Westward Villa area south of Bay Street - but not to the same extent as on the north. I doubt if there would be a major hotel on the south side - development would be more to apartment houses. Trend - gradual for past 15 years - to apartment houses and hotels.

Blocks 2, 3, 4 & 5 - I envisage - food stores - commercial usage. At present - Swank Club, Foodstore, Liquor Store. 10

Last 10 years I have sold property in the area. I once owned property in Block 2. I have had clients looking for apartment sites to whom I have recommended Westward Villas - especially, Block 4 - possibly Block 5. I was approached by City Meat Market chain - that I erect food stores on Block 2 - for leasing to the foodstores.

Government valuer since 1959 - in a good year I might assess 50 properties: in some years only 20. I have looked at the plaintiffs house - from Texaco. I have a copy of the valuation - put in Ex.2. Knowledge - and intuition based on experience over the years. 20

CROSS-EXAMINED

£50,000 might be got - over years - i.e. 25% increase. I sold my own house in Westward Villas - apartment house. Other houses of Plaintiffs' type - of 35 - £60,000 - dep. on the type of house. A lot of residences built in the Westward Villas area - Bay Street side of Block 2, 3, 4, 5 - apartment houses rather than residences. Block 2 may be residences - Block 3 - 1,2, 3, 4, 5 & 6 residences. 30

Block 4 - part of - facing Balmoral Club - is owned by Balmoral. Vague knowledge of covenants on Westward Villas - I know there are restrictions in some lots in Westward Villas. I have never looked for site for filling station or garage there. Cable Beach side - access to sea - therefore - sanitation for apartments and hotels.

NO. 13

EVIDENCE OF O. VALDEZ

In the
Supreme
Court

ORLANDO VALDEZ sworn

Defendants'
Evidence

No.13

O. Valdez

Examination

Graduate - University of Havana Architectural Engineer. At request of Texaco - I prepared plans for a filling station - at Westward Villas a subdivision - and "external appearances." I produce plan of general layout of the station - Ex. 3 and of external appearance - Ex. 4.

10

Plan prepared in accordance with safety precautions of Texaco Company - in accordance with the worldwide safety code. Plan calls for a 7 foot high wall - tapering to 5 feet: around the perimeter - (7 feet mostly).

2nd April
1968

NO. 14

No.14

EVIDENCE OF F. VON SCHILLING

F. Von
Schilling

FRANCIS VON SCHILLING sworn

Examination

Manager of Texaco Antilles Company - Bahamas.

2nd April
1968

20

We buy the land - build the service station and we lease to a third party for operation. We exercise our control through the lease. That would apply to the proposed station for Westward Villas: it would be erected in accordance with our safety regulations (U.S.A.) - more stringent than Bahamas.

30

Use of this station (service) - object to sell gasoline - associate products, oils, lubricants - brake fluid, etc. We will grease and change oil in cars - wash - change and repair tyres - replace bulbs - minor type of motor service. We do not require a garage licence for this service station: we require a licence to store and sell gas products and a general shop licence. I am not proposing to do any engine work or overhaul - no body work - no replacement of a radiator. There will be no mechanics at the service station and no body builders. We have no space for storage for vehicles. A gasoline storage tank - underground, with concrete cover will not explode - except in "impossible" situations, e.g. a jet aircraft crashing. Possible fire - filling -

In the
Supreme
Court

match lighting and smoking. I cannot think of any continuous bell ringing in the station.

Defendants'
Evidence

We control our lessees through lease agreement - for a term of one year - renewable: conditions of cleanliness in the lease - inspections. Hours of operation? - 6 day week - hours depend on the work the station does: Initial plans - 7.30 a.m. start - close down everything except pumps at 6 p.m. and the latter by 8 p.m. or 9 p.m. depending.

No.14

F. Von
Schilling

Lighting? Dealers keep a light on in the sales room - one under the canopy. No flood lights - will not light up the surrounding area.

10

Examination

2nd April
1968
(continued)

Section north of the road was going hotels - condomoniums - apartment houses. This means business. Once Cable Beach built up, the next section to go 'multi' would be the northern blocks of Westward Villas: there are already signs - already shop centre - warehouse - laundry - sewerage plant - all 'commercial'. The lots we are on are shewn as 'commercial' on the plans. This site should so cater for all.

20

I produce my letter (copy) to Town Planning of the Sept. 6th, 1967. Ex.5. I produce the reply - 22nd September 1967 - Ex.6.

Subsequently, we got a building permit - 30th November 1967 - Ex.7. (Bundle of Title Documents put in and marked Ex.8). I produce American Investment Company Limited to Anjask Limited dated 14th July 1966 - recorded - Ex.9.

Cross-
examination

CROSS-EXAMINED

30

Conveyance from Anjask to Texaco - Date? - 17th January, 1968. Our Company inquired into the Covenants - we referred all six lots - 13-18 to Higgs & Johnson. We did not inform Town Planning about the covenants. Ex.1 shews proposed widening of West Bay Street. Present width is 25-30 feet.

Mechanics - none - put in lease? No - operator could put a mechanic? He would. He would have to apply for a garage licence. We could take it away after a year from the operator.

40

In the lease - stipulation would be put in -

re operations, work and repairs, etc. We would refuse renewal at the end of a year and cancel the lease at any time for any given cause. The back area of the station would be used to keep cars out of the sun - while being washed. Major noise item? Inside the station will be the operation of the pumps under a canopy: hydraulic lift to raise a car for greasing and oil. The compressor? Inside a room - doubt it could be heard 30-40 feet away. Door slamming - yes - a factor: change of tyres - yes. At the rear of the station - which backs on to the plaintiffs' property - we would have a 7 foot wall - or higher. 7 foot is requested. There is a wall - as wings on either side of the building - stretching across the property - 7' in height and would act as a sound barrier against even road traffic noises. We have not finalised the landscape ideas - subject to Town Planning. I should like to see a barrier of trees against the wall - behind it - and backing on to the plaintiffs' property. We are going to make this a very attractive station - we would hide the ugly parts. We have had an offer to buy this site: offer made through a Real Estate Company - in conjunction with a developer and a local merchant.

I understand by Super Value. For this site, Texaco were bidding against - Sinclair - Esso - Gulf.

Back wall of our site is 20 feet from the plaintiffs' property - and the edge of the building will be 5' from the back wall. The operators part of the station will be 80-90 feet - from the plaintiffs' boundary.

The new Highway (2 lanes going west) will run adjacent to the property lines of the owners of Westward Villas properties. The road will run by the gas station - and the private properties. When I bought the site - we had made a careful study - we felt it obvious that entire Cable Beach 60' from place of lubrication to edge of the plaintiffs' Company. 4 cars can be taken at one time at the rear - 3 for washing, one for greasing. This area will not be closed in. Back portion - mostly open - columns. Workshop - mainly for repair of tyres - I would not say that was a repair to a car. Tyres now repaired hydraulically - say - 8 a day. No noise from hydraulic lifts. Certain amount of noise from a grease gun - but not as loud

In the
Supreme
Court

Defendants'
Evidence

No.14

F. Von
Schilling

Cross-
examination

2nd April
1968
(continued)

In the
Supreme
Court

as someone talking in a loud voice. Wall to hide operations. Without a wall undesirable to have a filling station at the back of one's property.

Defendants'
Evidence

No.14

F. Von
Schilling

Cross-
Examination

2nd April
1968
(continued)

Discharge of gas trucks - gravity discharge. Mr. Malcolm is a technical dealer - we have head lease - of Mr. Malcolm's service station, and we have subleased them to Mr. Malcolm - 15 years. Yes - agree minor repairs on all service stations. If enough gas not sold - repairs? Not by someone employed to fill tanks of cars. Hours of opening will be in the lease - under a shop licence for which I think, we should have to apply for. We cannot open as long as we like - I don't think that is true.

10

Re-examined

Re-
examination

Not our intention to open as long as we like. Mr. Malcolm is not to get the lease of the station. In the lease we intend to cover the points raised in the Court today.

Bethel: I wish to produce two documents to fill the gap in defendants' title.

20

- (1) Conveyance 27/1/39 Ocean and Lake View Company Limited to Bahamas Limited - Ex. N. and
- (2) Conveyance 3/5/35 - Bahamas Limited to Chapman Limited Ex. O.
Conveyance (Brown Company to Ocean & Lake View Company Limited) 1935 relating to 4 of the 6 Lots owned by the defendant. 13, 14, 15, 16, 17 & 18.

No.15

NO. 15

Defendants'
Case

DEFENDANTS' CASE

30

2nd April
1968

Toothe: Plaintiff Lots - No.39 and half of 40 of Block 3.

Defendants Lots - Lots 13-18 of Block 3.
The filling station covers all the lots in question.

Question:-

- (1) Whether a building scheme has been established within the principles laid down by the case of *Elliston v. Reacher* - 1908 2 Ch. Page 374. In the Supreme Court
- (2) Whether the defendant Lots 13 & 14 and 17 & 18 of Block 3 are subject to Restrictive Covenants in any event. —
No.15
- (3) Whether having regard to a very peculiar Covenant, are the Covenants void in toto because they are tainted with being against Public Policy. Defendants' Case
2nd April 1968
- 10 (4) Meaning of the word "Public Garage" - (the only covenant complained of). (continued)
- (5) Whether having regard to the equities in this case, it is a proper case for the Court to grant the relief asked for - damages or any relief whatsoever.
1. *Elliston v. Reacher*.
Evidence - Common Vendors. No conveyance by Brown Company to plaintiffs predecessors in title has been produced. That is all I can say about this.
- 20 2. Lots 13 & 14 and 17 & 18. - of defendants property. As far as blocks 2-5 of the Westward Villas subdivision is concerned - they were to be extended from the scheme. See Ex. 9 of defendants title and paragraph 6 thereof - of the common forms of Conveyance used by Brown Company.
- 30 Ex. 'K' - Brown Land Company - to Ocean and Lake View - the predecessor in title of the defendant. No restrictive covenants are imposed. Referring to the plan - the lands coloured pink which included Lots 13 & 14 and 17 & 18 of Block 3 were conveyed free from any restrictive covenants. Some 520 Lots in the subdivision and only 170 of them were specifically made subject to restrictive covenants, which may have destroyed the building scheme in so far as the lots coloured pink represented in Ex. 'K' are concerned.
- 40 Alternatively, the Company (Brown) in paragraph 6 of the Standard Form, in imposing restrictions reserved the right to itself to except the Lots 2-5 inclusive from the

In the
Supreme
Court
—
No.15
Defendants'
Case
2nd April
1968
(continued)

restrictive covenants. The company imposes on all lots - except 2-5, unless we choose to do so. And so lots 13 & 14 - & 17 & 18 are conveyed free from restrictive covenants. A person who takes land under a scheme which in terms permits the common vendor to vary the scheme by omitting some lots from the scheme cannot be heard to allege any implied conditions in the scheme prohibiting him against the power or right to vary the scheme. Pearce v. Maryon Wilson 1935 Ch page 188 - from pp. 191 & 192. Then the defendants can do what they like with Lots 13/14 & 17/18.

3. Covenant No.7 - clearly void and unenforceable as being against public policy. That clause could be put out but having regard to the particular document (Standard Form) and Para 2 of the document - the restrictive covenants stand or fall together because of the way they have been imposed - Purchaser and Company - the word "all".
Burrows - Words & Phrases Vol.1 "all" page 145. Para 2. Mandatory - obey all the restrictive covenants if they can be imposed.

Court: I should have thought the 'bad covenant' could be exercised.

4. Public Garage.

Plaintiffs say "public garage" is going to be put up. We say - filling station - an entirely different animal.

"Garage" - evidence of Mr. Malcolm.

Garage - (1) repair

Filling station - (2) sell gas

Different licences required (1) garage (2) shop.

1925 Public Garages Act - Ch 287 - Definition:

"repairs" for profit -

1922 - no licence - 1925 Legislature - decided a repair shop should be licensed. Oxford

Dictionary.

Malcolm:- Repairs to constitute a 'garage':?
engine overhauls and body work was the answer.

5. If there is a restrictive covenant applying to the plaintiff lots - and the lots 15 & 16 of the defendant - or in toto - proper case for an

injunction? Defendants do not admit 13, 14 & 17, 18 are subject to restrictive covenants.

In the
Supreme
Court

(a) Four out of 6 lots are not subject to restrictive covenants.

(b) Change in character of neighbourhood on both sides of Bay Street.

No.15

Defendants'
Case

10

There have been breaches of covenants out here - and the plaintiffs have acquiesced. - Sewerage - Laundry - Machine Lots - in one lot of Westward - plaintiff took no action: they will get the benefit of the pump. Breaches would lead any landowner to assume that there had been a waiver of restrictive covenants. Plaintiff acquiesced in breaches down the road.

2nd April
1968
(continued)

Evidence of Estate Agent - that changes are going forward.

20

1. Change of user/acquiescence/general character Osborne & Brady 1903 2 ch. page 446-450.
2. Sayers v. Collier 28 Ch. page 103 at 107 & 108.
3. Sobey v. Sainsbury 1913 2 Ch. page 513 at page 529.

30

This is not a proper case for injunction or damage - even if defendant fails. Nuisance - pleaded but not proved - no evidence given. Lots 15 & 16 - so far as they are concerned the equitable principles apply and the defendants have 13, 14, 17 & 18, which they can do what they like with. Lots 15 & 16 can be paved over. If we can use 4 out of 6 lots, it would be inequitable for the court to grant injunction relief, having regard to the changing usage - acquiescence in breaches already - highway is coming through.

The front area of Westward Villas will be commercialised within a few years. Also other users - not prohibited will be more offensive - to the plaintiff - than the filling station.

In the
Supreme
Court

NO. 16

PLAINTIFFS' CASE

No.16

Plaintiffs'
Case

2nd April
1968

Bethel: Building scheme?

Nothing advanced to shew there is no building scheme with regards to Lots 15-16. So, the restrictive covenants apply here. Common Vendor/ Newton Higgs evidence - loss of a conveyance - such a conveyance existed - executed - and contained the covenants (See Ex.1) (Brown to Hilton). Plaintiff should not suffer because at this stage original cannot be produced but otherwise proved. In Ex.L - Building scheme is set up - any subsequent owner is bound by the building scheme - not only so but in any case - when a covenant has once clearly annexed to a piece of land, the presumption is that such covenant passes on the assignment of the land. Rogers v. Hosegood - 1900 2 Ch. page 388. Conveyance Hilton to Chapmans Ltd. (Bundle Ex. 3) - there is a recital of restrictions imposed by Brown Company.

10

As far as lots 15 and 16 are concerned - no doubt a building scheme.

20

Intent - no one reading the recitals in the printed form of conveyance and covenants - can be in doubt that a building scheme was set up. But covenants pass with the land. Lots 13, 14 & 17, 18 subject to the restrictions. Contended that in Ex. K (Brown - to Ocean/Lake View) no such covenants were imposed.

Ex. K - a mere disposal of all the property they had to Purchaser. Even if no mention of restrictive covenants, the purchaser took the land subject to the covenants, which were binding as imposed by Brown Company. Brown could not make exceptions, except in terms of their deed.

30

See Page 2 & 6 of the Brown Building Scheme. Mackenzie v. Childers 1890 - 43 Ch. Div. at page 265. at page 278.

Notice:- Ocean and Lake View purchase without notice of restrictive covenants - If legal title does not refer to them - they may not be bound. But submit they did have notice: title should have been searched - all the conveyances would have been seen.

40

1925 subdivision began 1935 - Ocean and Lake View Title. In the Supreme Court

On the plan attached to 1935 conveyance - these lots are restrictive. Plot 3 - notice on the plan that there were restrictive covenants.

No.16

10 Searches:- Purchase of remaining lots in a subdivision - purchasers would have to find out what had been sold or not. They should have looked at every conveyance. Conveyance Ocean Lake Company - to Bahamas Limited (Ex. N) 1939 - expressly subject to the covenant imposed on the hereditaments on Brown Company. The Ocean Lake are deemed to have knowledge.

Plaintiffs' Case

2nd April 1968 (continued)

Notice

Newsom Restrictive Covenants 4th Ed. p.56 - Section 57 law of Property Conveyancing Act (Ch.115). W.E. Brown gave a covenant - and the remaining lots in that company - were, therefore, burdened.

20 In Nesbitt & Potts Contract - 1905 1 Ch. at p.402. Texaco had actual notice - (Newsom page 62 5th Ed). See para 2 of the conveyance - W.E. Brown to Butler - Ex. L (See also Ex. 10). See Ex. 9 and Ex. L - The Company (Brown) excluded Lots 2-5.

Para 6 - the Company will sell these out either with no restrictions or different ones. See schedule (4). To remove for the purpose of ----- anything outside still prohibited.

Residences/Apartments/Hotels did the Company remove the restrictions in re Lots 2-5.

30 Blocks 2-5. Private residences - hotels/apartments/ or stores. These blocks are subject to the same restrictions as in the schedule: but instead of private houses, hotels and apartments could be put up. All the restrictions in the schedule can be waived by the company - only for the purposes stated in paragraph 4.

40 Submit:- Blocks 2-5 are restricted to the named things allowed in paragraph 4 - with the consent of the company - and all the other restrictions apply. (It is negative covenant by implication). Filling station or (service) is a hotel or apartment house or a store for sale of provisions/merchandise. Lots

In the
Supreme
Court

13, 14, 17 & 18 - subject to restrictive covenants - of which the defendants' predecessors had notice. All covenants void - if one against public policy - ? Cannot agree that all should be thrown out!

No.16

Plaintiffs'
Case

2nd April
1968
(continued)

Public Garage:- Restriction No.4 - applies to the whole of Westward Villas - Words and Phrases:- Vol. 2 page 394. Submit - repairing a puncture is repairing a vehicle. "Repair" - Oxford Dictionary. Cannot make repairs definitive. The whole intent - residential. Width of lots - shopping centres small shops. Acquiescence - Ex. 1 Westward Villas subdivision - developed in accordance with restrictions. Other breaches - not as filling station - no acquiescence. Red on Ex. 1 shew residences that are already there - a few apartment buildings on Blocks 3, 4 & 5 - exactly in accordance with the conditions. Lots 27, 28, 29 & 30 in Block 3 - apartments and series of stores down below. Tenor not so changed by breaches that it would be inequitable to enforce any. Cable Beach area not Westward Villas - no effect therefore.

10

20

Sainsbury case. Preston 4th Edition page 128.
Nuisance - prevention.

Reservation to widen road known at the time.
Potential danger: some element.

English and Empire Digest Vol. 36 page 269 "Gasoline Oil Pump and Tank". (1923).

Lots 13, 14, 17 & 18 are subject - Lots 15 & 16 (which came through Albury, who bought direct from Brown on the printed Form - are also bound.

30

One other aspect - paragraph 7 of statement of claim - Chapmans came into possession by purchase of all the lots before the court today and in the conveyances out by Chapman - there were covenants by all the purchasers from Chapmans to observe and perform these conditions. Texaco is a successors in title to Chapmans. If Brown not a Common Vendor to establish a building scheme, then Chapmans was. Plaintiff also got his property through Chapmans.

NO. 17DEFENDANTS' REPLYIn the
Supreme
Court

No.17

Defendants'
Reply2nd April
1968Toothe:

10 Chapmans Limited got all the lots of both
defendants and plaintiffs - and became a common
vendor and imposed covenants. But if Chapmans' a
common vendor - with such rights, then the same
conditions apply to the covenants imposed by W.E.
Brown Company - as would apply to an easement coming
into the ownership of the servient tenant. Effect -
no restrictive covenants. Common Vendor - the
original one who established the building scheme -
the Brown Company. Willie v. St. John 1910 1 Ch.
page 325.

Rogers case - covenants run with the land - but
the case deals with dominant and servient owners -
case not in point.

Mackenzie's case - there was no power to waive
in the restrictive covenants.

20 Paragraph 6 of the form of the conveyance and
paragraph 4 of the restrictive covenant -

30 The developer is saying that all the lots will
be subject to such covenants - except not impossible
on lots 2, 3 & 5. He also says in paragraph 4 -
once we have imposed restrictive covenants, we
reserve the right to remove them to allow certain
things to take place - 2 separate operations - (1)
dealing with imposition of covenants generally and
(2) dealing with restricting covenants once given
in a conveyance - but reserving the right to come
along and remove them to allow shops, etc.

If there is confusion - as I submit - then such
confusion goes against the plaintiffs in this case -
leaving us with paragraph 6.

40 Submit Blocks 3, 4, 5 - treat as commercial -
and I reserve the right to do what I want with them -
e.g. put up a hotel - in which liquor may be sold.
Covenants 5 & 6 - Nuisance - Do not help re intention.
'Garage' - Bethel was dealing with conjecture.
'Repairs' - in 1925 - ambit of garage. Malcolm's
evidence. Brown Company - wound up - assets if any

In the
Supreme
Court

vested in the Bahamas Government - perhaps the
powers are vested in Bahamas Government - Town
Planning Department

No.17

Defendants'
Reply

2nd April
1968
(continued)

No.18

NO. 18

JUDGMENT

Judgment of
Cunningham
Smith J.

Cunningham Smith, J.:-

20th May
1968

Mr. & Mrs. Kernochan, the plaintiffs, claim damages against the defendant, Texaco Antilles Limited for "breach of Restrictive Covenants" contained in a conveyance dated the 14th July 1966 made between American Investment Company Limited of the one part and Anjask Company Limited and an injunction to prevent Texaco Antilles Limited or their agents and servants from erecting a gas station or public garage on Lots 13-18 inclusive of Block 3 in the subdivision known as Westward Villas in the Island of New Providence. 10

Anjask Company Limited sold these lots 13-18 to Texaco Antilles Limited in 1968 and foundations have been dug for the "gas station or public garage". The proposed buildings adjoin Mr. & Mrs. Kernochan's house, which is built upon lot 39 and one half of lot 40 in Block 3. The position of the lots in question can very readily be seen from a glance at the Plan (Ex. B). 20

It might be as well at this stage to set out in full the Covenant of which it is said Texaco Antilles Limited is in breach. It is No. 4 of the Schedule annexed to the conveyance by American Investment Company Limited to Anjask Limited (repeating the schedule in an Indenture of 5th May 1927 between W.E. Brown Land Company Limited and J. Baird Albury). 30

"No more than one private residence and one garage or one combined garage and servants' quarters shall be built on any lot except on the lots in Block Two (2) to Five (5), inclusive. The Company reserves the right, however, to remove the restrictions from any or all of the lots of the said Block Two (2) to Five (5), inclusive, to allow the building upon them of hotels or apartment houses or stores for the sale of provisions or other merchandise, but said stores shall be permitted to be built only on the northern half of Blocks Three (3) and Four (4). No machine shop, public garage or manufacturing establishment will be permitted on any of the lots of Westward Villas Sub-division and First and Second Addition Westward Villas aforesaid."

In the
Supreme
Court

No.18

Judgment of
Cunningham
Smith J.

20th May
1968
(continued)

10

20

The first point for decision is whether Westward Villas subdivision is an estate for development according to a general building scheme.

I quote from a recital "B" in the Conveyance by Anjask Limited in favour of Texaco Antilles Limited dated 17th January 1968:

30

40

"(B) The said hereditaments form a part of certain lands situate in the Western District of the said Island of New Providence laid out in lots for building purposes by W.E. Brown Land Company Limited comprising the "Westward Villas" and "First and Second Addition Westward Villas" Subdivision (hereinafter referred to as "the said Subdivision") which said Subdivision and the lots in the said subdivision form part of an estate to be developed according to a general building scheme and to this end some lots are subject to certain restrictions and conditions (hereinafter referred to as "the said restrictions") corresponding with those set forth in the Schedule to an Indenture made the Fifth of May A.D. 1927 between the said W.E. Brown Land Company, Limited of the one part and J. Baird Albury of the other part"

On the facts of the case before me and on the authority of Elliston v. Reacher 1908 2 Ch. 374, I am in no doubt that a building scheme for the subdivision was created and that the Common Vendor is the W.E. Brown Land Company Limited.

In the
Supreme
Court

No.18

Judgment of
Cunningham
Smith J.

20th May
1968
(continued)

There is one point with which I must deal before considering the alleged breach of covenant. The covenants apply without question to Lots 15 & 16 of Block 3. The original Conveyance inter alia of Lots 13, 14, 17 and 18 dated 3rd August 1935 by W.E. Brown Land Company Limited in favour of the Ocean & Lake View Company Limited does not impose or make reference to the restrictive covenants. The conveyance, however, disposes of much other property than the Westward Villas subdivision. Plan 1, attached to the Conveyance is a plan of the subdivision and the legend refers to the 'development' of the area and the parts of the subdivision restricted to "residence". The 1968 Conveyance in favour of Texaco Antilles Limited refers to the Brown Land Company Limited covenants. The point is made that their predecessors in title (Ocean and Lake View Company Limited) bought from the Common Vendor, and without notice of any restrictions or covenants. As regards this I think the submissions of Mr. Bethel are sound. The original conveyance in favour of the Ocean & Lake View Company Limited was a mere disposal of property, and the purchasers took the land subject to the covenants imposed by W.E. Brown Land Company Limited in accordance with the building scheme.

10

20

Then we have the covenants of the W.E. Brown Company Limited in the 1920-1930 decade, when the building scheme was created to include in conveyances of lots in the subdivision the same conditions and restrictions to be mutually enforceable by and against all owners of the lots of land.

30

All that the Brown Land Company Limited reserved, as I read the Scheme, was the right to allow a certain class of buildings to be set up - "hotels or apartment houses or stores for the sale of provisions or other merchandise" only in a specified area, with consequential alterations in building specifications. But the restriction against the building of a public garage on any of the lots in the subdivision remains.

40

I think the position here is as is set out in Preston & Newsom's Restrictive Covenants 3rd Edition p.31:

"In the absence of any power to waive or vary any restrictions the Common Vendor is himself

bound, as against his purchasers or lessees, in respect of any of the property which may still be vested in him."

In the
Supreme
Court

See also MacKenzie v. Childers 1890 43 Ch. p. 265.

No.18

As regards the point that Ocean & Lake View Company Limited bought without notice of the covenants and so were not bound, it must be noted that the building scheme began in 1925 and the Company's conveyance is dated 1935.

Judgment of
Cunningham
Smith J.

20th May
1968
(continued)

10 The plan to that conveyance refers to residential and commercial lots. Conveyances of other lots should, in the circumstances, have been examined at the time, and the position of the Ocean and Lake View Company Limited is, I think, in the circumstances, that of a purchaser "affected by notice of matters of which knowledge could have been obtained on a proper investigation of title". (Preston & Newsom's Restrictive Covenants 3rd Edition, page 57). I note that when the Ocean and
20 Lake View Company Limited sold Westward Villas subdivision to Bahamas Limited in 1939, reference was made to the W.E. Brown Land Company's restrictive covenants. When the property eventually came to the defendants, Texaco Antilles Limited they had actual knowledge.

The main question now is whether the proposed premises - "gas filling station" or "servicentre" as they are commonly called come within the expression "public garage".

30 I have been referred to Words & Phrases (Burrows Vol. 2) for the interpretation of the word "garage" and while the French derivative meant "shelter", modern English dictionaries define the word as not only a building for storage but also for cleaning or repairing motor vehicles.

40 The only definition of the word "garage" in the Bahamian Laws is contained in "The Garage Licensing Act," Ch. 287 - where, for the purposes of the Act, "garage" means "any premises used for the repair of vehicles for profit".

An attempt was made to distinguish a "garage" from a "gas filling station" or "servicentre" according to the repairs done at the respective establishments -that

In the
Supreme
Court

No.18

Judgment of
Cunningham
Smith J.

20th May
1968
(continued)

in a "gas filling station" repairs were not done to the engine or body work - but only to tyres, wind screen wipers, electric bulbs - in other words, "minor repairs". I do not think this distinction assists - "minor repairs" to a car are nonetheless "repairs" and repairing a tyre is as much a repair to a car as straightening out a dent on the body.

In the present case on the evidence, including plans, as to the nature of the proposed premises, to be walled in at the back - the petrol tanks, a store for the sale of lubricants and other motoring necessities, a workshop mainly for repairs to tyres, hydraulic apparatus for raising cars for greasing and oiling, washing facilities - I have no doubt that the proposed building is a garage available for public use.

10

By the use of the word "garage" in 1925, I cannot think that the Common Vendor intended simply a public shelter for motor vehicles. That in itself might have been quite innocuous. If he could have foreseen 40 years on, no doubt he would have been more expansive but I am absolutely certain that when he used the word "garage" what he had in mind was a place where cars were kept and repaired and petrol and oil were sold.

20

What is proposed to be set up is a public garage, call it what you will - and I have no hesitation in finding in favour of the plaintiffs on this point.

There are just one or two points which I should mention. They are that plaintiffs, Mr. & Mrs. Kernochan, and the defendants, Texaco Antilles Limited, both own land subject to the scheme of development and that there is no evidence on which I can hold that Mr. & Mrs. Kernochan have lost their right of action or right to an injunction by delay or acquiescence in other breaches of covenants which have taken place. There has, in my opinion, been no change in the character of the neighbourhood: it remains essentially residential. I do not find anything of substance in the contention that if a certain covenant must fall to the ground as being repugnant to public policy, the others fall with it.

30

40

For these reasons, there will be judgment in favour of the plaintiffs. That is they are entitled to an injunction as prayed and costs. I do not find that they are entitled to any damages.

H.C. Smith
Judge

NO. 19

INJUNCTION

In the
Supreme
Court

THIS ACTION coming on for trial on the First day of April 1968 before this Court in the presence of Counsel for the Plaintiffs and for the Defendant

No.19

Injunction

AND UPON READING the pleadings

AND UPON HEARING the evidence and what was alleged by the Counsel for the Plaintiffs and for the Defendant

20th May
1968

10

THIS COURT DOETH ORDER that the Defendant be restrained whether by itself or its servants or agents or otherwise from doing the following acts that is to say building or permitting to be built on lots 13, 14, 15, 16, 17 and 18 of Block 3 of the Subdivision known as Westward Villas First and Second Addition Westward Villas situate in the Western District of the Island of New Providence the property of the Defendant a gas station or public garage or from carrying on or permitting to be carried on on the said lots the business of a gas station or public garage or any other trade or business in breach of the Restrictive covenants imposed on the owners or occupiers of the said lots by the W.E. Brown Land Company Limited and referred to in a Deed of Conveyance dated the 12th day of February 1968 and made between Anjask Company Limited of the one part and the Defendant of the other part

20

30

AND IT IS ORDERED that the Defendant do pay to the Plaintiffs their costs of this action down to and including this Order.

Dated the 20th day of May 1968.

BY ORDER OF THE COURT

J.N. Brownlees

REGISTRAR.

In the
Court of
Appeal

NO. 20

NOTICE OF APPEAL

No.20
Notice of
Appeal
27th June
1968

TAKE NOTICE that the Court of Appeal will be moved so soon as counsel can be heard on behalf of the above-named (Defendant) Appellant on appeal from the whole of the Judgment and Order herein of The Honourable Mr. Justice Hedworth Cunningham Smith given and made at the trial of this action on the 20th day of May, A.D. 1968 whereby it was ordered that the Defendant be restrained whether by itself or its servants or agents or otherwise from doing the following acts that is to say building or permitting to be built on lots 13, 14, 15, 16, 17 and 18 of Block 3 of the Subdivision known as Westward Villas First and Second Addition Westward Villas situate in the Western District of the Island of New Providence the property of the Defendant a gas station or public garage or from carrying on or permitting to be carried on on the said lots the business of a gas station or public garage or any other trade or business in breach of the Restrictive covenants imposed on the owners or occupiers of the said lots by the W.E. Brown Land Company Limited and referred to in a Deed of Conveyance dated the 12th day of February 1968 and made between Anjask Company Limited of the one part and the Defendant of the other part

AND IT IS ORDERED that the Defendant do pay to the Plaintiffs their costs of this action down to and including this Order For an Order that the order herein dated the 20th day of May, A.D. 1968 be set aside.

AND FURTHER TAKE NOTICE that the grounds of this Appeal are:

1. That the Plaintiffs' and Defendants' property were not subject to a building scheme.
2. That Lots 13, 14, 17 and 18 are therefore not restricted.
3. That any restrictions formerly imposed on Lots 15 and 16 for the benefit of the Plaintiffs' property were extinguished when all were owned by Chapman's Limited on the 24th of October, A.D. 1939.

4. That the construction of the general form of conveyance used by The W.E. Brown Land Company annexed to Exhibit 8 being an indenture made between American Investments Company Limited of the one part and Anjask Limited of the other part dated the 14th of July, A.D. 1966 does not forbid users of lots 15 and 16 as a petrol filling station.
- 10 5. That the action between the parties is not a case for equitable relief.
6. That the terms of the Order dated the 20th day of May, A.D. 1968 are in any event too wide.

In the
Court of
Appeal

—
No.20

Notice of
Appeal

27th June
1968
(continued)

DATED this 27th day of June, A.D. 1968.

E. Patrick Toothe

Attorney for the above-named Appellant

NO. 21

AMENDED NOTICE OF APPEAL

No.21

Amended
Notice of
Appeal

20 TAKE NOTICE that the Court of Appeal will be moved so soon as counsel can be heard on behalf of the above-named (Defendant) Appellant on appeal from the whole of the Judgment and Order herein of The Honourable Mr. Justice Hedworth Cunningham Smith given and made at the trial of this action on the 20th day of May, A.D. 1968 whereby it was ordered that the Defendant be restrained whether by itself or its servants or agents or otherwise from doing the following acts that is to say building or permitting to be built on lots 13, 14, 15, 16, 17 and 18 of Block 3 of the Subdivision known as Westward Villas First and Second

30 Addition Westward Villas situate in the Western District of the Island of New Providence the property of the Defendant a gas station or public garage or from carrying on or permitting to be carried on on the said lots the business of a gas station or public garage or any other trade or business in breach of the Restrictive covenants imposed on the owners or occupiers of the said lots by the W.E. Brown Land

23rd October
1968

In the
Court of
Appeal

No.21

Amended
Notice of
Appeal

23rd October
1968
(continued)

Company Limited and referred to in a Deed of Conveyance dated the 12th day of February 1968 and made between Anjask Company Limited of the one part and the Defendant of the other part and it was ordered that the Defendant should pay to the Plaintiffs their costs of this action down to and including the said order

For an Order that the order herein dated the 20th day of May, A.D. 1968 be set aside and that the action shall be dismissed with costs both of this appeal and in the Court below.

10

AND FURTHER TAKE NOTICE that the grounds of this Appeal are:

1. That the Respondents are not entitled as against the Appellant to the benefit of any of the restrictive covenants upon which this action is bounded, and in particular:

(a) That the evidence does not establish that the respective properties of the Appellant and of the Respondents is or ever was comprised in any enforceable building scheme, there being no, or alternatively no sufficient, evidence to establish any of the essentials of such a scheme as stated in Elliston v. Reacher (1908) 2 Ch.374, save and except that the Appellant and the Respondents derive title under a common vendor (namely W.E. Brown Land Company Limited);

20

(b) That in any event the parts of the Appellant's property which are known as lots 13, 14, 17 and 18 were conveyed on 3rd April 1935 by the said common vendor to Ocean and Lake View Company Limited, a purchaser for value without notice, subject to no restrictions, and that such parts were thereafter free from the burden of the restrictions (if any) which were binding thereon before such conveyance;

30

(c) That in any event the parts of the Appellant's property which are known as lots 15 and 16 belonged for some time following 24th October 1939 to Chapmans Limited, a company which at the same time was the owner of the whole of the Respondents' property, so that the restrictions (if any) which were binding on lots 15 and 16 before such date for the benefit of the Respondents' property were on such date extinguished by unity of seisin

40

2. That the buildings and works which the Appellant proposes to execute and place on the property of the Appellant would not be prohibited by the covenants sued upon (if enforceable) and in particular that the same would not be a public garage within the meaning of such covenants.

In the
Court of
Appeal

No.21

3. That the said covenants (if enforceable) do not prohibit user of the Appellant's land for the purposes of a public garage or a gas station or a petrol filling station.

Amended
Notice of
Appeal

23rd October
1968
(continued)

4. That the case is not in any event one in which equitable relief should be granted.

5. That the terms of the injunction granted herein (if otherwise sustainable) are in any event too wide.

DATED this 23rd day of October, A.D. 1968.

E. Patrick Toothe

Attorney for the Appellant

NO. 22

No.22

RESPONDENTS' APPLICATION THAT THE
DECISION OF COURT BE AFFIRMED ON
ALTERNATIVE GROUNDS

Respondents'
Application
that decision
of Court be
affirmed on
alternative
grounds

14th March
1969

TAKE NOTICE that the Court Appeal will be moved on Tuesday the 18th day of March 1969 at 10 o'clock in the forenoon for an Order that leave be granted to the Respondents to contend that the decision of the Honourable Mr. Justice Cunningham Smith given and made at the trial of this action on the 20th day of May 1968 should be affirmed on the following alternative grounds in so far as the same may be necessary namely that the Respondents are, irrespective of the existence or non-existence of a building scheme, entitled as against the Appellant to the benefit of the restrictive covenants made by the W.E. Brown Land Company Limited in respect of all the lots in the Subdivision known as Westward Villas Subdivision and First and Second Addition Westward Villas retained by the said W.E. Brown Land Company Limited on its sale of lots 39 and the eastern half

In the
Court of
Appeal

of lot 40 in Block 3 to T.S. Hilton the predecessor in title of the Respondents on the 17th of May 1933, some of which retained lots namely lots 13 to 18 in Block 3 later came into the possession of the Appellant.

No.22

Dated the 14th day of March 1969.

Respondents'
Application
that decision
of Court be
affirmed on
alternative
grounds

McKinney, Bancroft & Hughes

McKinney, Bancroft & Hughes
Attorneys for the Respondents.

14th March
1969
(continued)

No.23

NO. 23

10

Judgment of
Sinclair P.

JUDGMENT OF SINCLAIR, P.

3rd July
1969

In the action the plaintiffs/respondents claimed an injunction to restrain the defendants/appellants from building or permitting to be built a gas station or public garage on Lots 13 to 18 of Block 3, Westward Villas Subdivision and First and Second Addition Westward Villas (hereinafter referred to as "The Subdivision") or from carrying on or permitting to be carried on on the said property the business of a gas station or public garage or any other trade or business in breach of certain restrictive covenants. There was also an alternative claim founded on nuisance. Lots 13 to 18 on which the proposed buildings were to be erected by the appellants adjoin and are immediately behind the respondent's house which is built upon Lot 39 and one half of Lot 40 of Block 3 of The Subdivision. The learned trial Judge held that a building scheme for the Subdivision was created, the common vendor being W.E. Brown Land Company Limited, that the scheme contained restrictions against the building of a public garage on any of the lots in the Subdivision and that the building proposed to be erected by the appellants was a public garage in breach of the restrictions. He granted an injunction as prayed. He made no finding on the claim for nuisance, but there is no cross-appeal, and that issue may be disregarded.

20

30

The story commences in February, 1925, when W.E. Brown Land Company Limited caused a lotted plan (Exhibit C) to be prepared laying out the subdivision in 18 blocks. That plan was lodged in the office of the Surveyor General, now the Crown Lands Office. Endorsed on the plan is the following note:

In the
Court of
Appeal

—
No.23

10 "The above map is a proposed general plan of the development of the land shown thereon. Until a plan covering any portion is filed for record the plan of development of said portion may be changed subject to the provisions of any contract in writing expressly made relating thereto."

Judgment of
Sinclair P.

3rd July
1969
(continued)

The northern half of Block 3 which includes Lots 15-18 is marked on the plan "Commercial", while the southern half which includes Lots 39 and 40 is marked "Apartments".

20 By a conveyance dated 5th May, 1927, W.E. Brown Land Company Limited conveyed Lots 15 and 16 of Block 3 of the Subdivision to J. Baird Albury, the predecessor in title of the appellants, subject to the conditions and restrictions set out in the Schedule thereto, paragraph 4 of which reads:

30 "No more than one private residence and one garage or one combined garage and servants' quarters shall be built on any lot except on lots in Blocks Two (2) to Five (5) inclusive. The Company reserves the right, however, to remove the restrictions from any or all of the lots of the said Blocks Two (2) to Five (5), inclusive, to allow the building upon them of hotels or apartment houses or stores for the sale of provisions or other merchandise, but said stores shall be permitted to be built only on the northern half of Blocks Three (3) and Four (4). No machine shop, public garage or manufacturing establishment will be permitted on any of the lots of Westward Villas Subdivision and First and Second Addition

40 Westward Villas aforesaid."

This conveyance was in a printed form and is the appellants' root of title to Lots 15 and 16. The appellants' root of title to Lots 13, 14, 17 and 18 is an indenture dated 3rd April, 1935, made between W.E. Brown Land Company Limited and Ocean

In the
Court of
Appeal

No.23

Judgment of
Sinclair P.

3rd July
1969
(continued)

and Lake View Company Limited (hereinafter referred to as "The Ocean Company"). By that indenture W.E. Brown Company conveyed to the Ocean Company the whole of the lots of the Subdivision remaining unsold, which included lots 13, 14, 17 and 18 of Block 3, together with other land. The unsold lots comprised about threequarters of the Subdivision. The conveyance did not contain any covenants or any reference to restrictive covenants or a building scheme. But one of the plans annexed to the conveyance is a reproduction of the plan Exhibit C with the note to which I have referred, together with an additional note endorsed thereon which reads:

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"The property shown upon this plan is restricted to residence except where otherwise indicated."

The respondents claim title through the same common vendor, W.E. Brown Land Company Limited, which conveyed Lots 39 and 40 of Block 3 to their predecessors in title, T.S. Hilton, by a conveyance dated in 1933. That conveyance was not in evidence, but it is common ground that it was in the same printed form as a conveyance dated 22nd March, 1928, of Lot 31 of Block 4 of the Subdivision from W.E. Brown Land Company Limited to H.F. Butler. That printed form is also identical with the Albury conveyance of 5th May, 1927.

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On behalf of the appellants it is conceded that the burden of the covenants in the Albury conveyance of 5th May, 1927, have devolved on them. It is also conceded that, subject to a question of unity of seisin which I shall refer to later, the benefit of those covenants, which affected lots 15 and 16 only, passed with the respondents' lots. As to all the lots owned by the appellants, the case for the respondents at the trial was that the whole of the Subdivision was subject to restrictions imposed under a building scheme created by the common vendor, W.E. Brown Land Company Limited. Those restrictions are as set out in the Albury conveyance. As I have stated, the trial judge found that such a scheme was proved. The appellants contend that a building scheme was not proved and that, even if it were proved, in so far as lots 13, 14, 17 and 18 are concerned, their predecessors in title, the Ocean Company, were purchasers for value without notice of the scheme and, accordingly, the appellants are not bound by it. The

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appellants also submit that in so far as the appellants' and the respondents' land is concerned, the covenants were extinguished by unity of seisin. At the hearing of the appeal the respondents were given leave to contend that the decision of the lower court be affirmed on the alternative ground that, irrespective of the existence of a building scheme, the respondents were entitled as against the appellants to the benefit of the restrictive covenants in the conveyance in 1933 of lots 39 and 40 from W.E. Brown Land Company Limited to Hilton which bound lots 13, 14, 17 and 18 of Block 3 as retained land. As to this contention, Mr. Newsom for the appellants submitted that the Ocean Company, and accordingly their successors in title, would not be bound by those covenants in the absence of notice and that there was no such notice. He conceded that the vendor's covenants in that conveyance, as also in the Butler conveyance, were annexed to the respondents' land, but submitted that the benefit of the covenants ceased by unity of seisin. Mr. Newsom further contended that the stipulations as set out in paragraph 4 of the Schedule to the Albury conveyance, which I have quoted, do not bind Block 3 of the Subdivision, that they are merely a restriction on the vendor's exercise of a licensing power and that, in any event, the buildings proposed to be erected by the appellants do not constitute a "public garage" within the meaning of paragraph 4. Finally, it was submitted that the form of the injunction is too wide and that the equitable remedy is not appropriate in the circumstances.

I propose to deal first with the submission that a building scheme for the Subdivision was not proved. The leading authority on building schemes is Elliston v. Reacher (1908) Ch.374 in which Parker J., as he then was, laid down the requirements of a building scheme as follows (at p.384):

"It must be proved (1) that both the plaintiffs and defendants derive title under a common vendor; (2) that previously to selling the lands to which the plaintiffs and defendants are respectively entitled the vendor laid out his estate, or a defined portion thereof (including the lands purchased by the plaintiffs and defendants respectively) for sale in lots subject to restrictions intended to be imposed on all the lots, and which, though varying in

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details as to particular lots, are consistent and consistent only with some general scheme of development; (3) that these restrictions were intended by the common vendor to be and were for the benefit of all the lots intended to be sold, whether or not they were also intended to be and were for the benefit of other land retained by the vendor; and (4) that both the plaintiffs and the defendants, or their predecessors in title, purchased their lots from the common vendor upon the footing that the restrictions subject to which the purchases were made were to enure for the benefit of the other lots included in the general scheme whether or not they were also to enure for the benefit of other lands retained by the vendors. If these four points be established, I think that the plaintiff would in equity be entitled to enforce the restrictive covenants entered into by the defendants or their predecessors with the common vendor irrespective of the dates of the respective purchases. I may observe with reference to the third point, that the vendor's object in imposing the restrictions must in general be gathered from all the circumstances of the case, including in particular the nature of the restrictions. If a general observance of the restrictions is in fact calculated to enhance the value of the several lots offered for sale, it is an easy inference that the vendor intended the restrictions to be for the benefit of all the lots, even though he might retain other land the value of which might be similarly enhanced, for a vendor may naturally be expected to aim at obtaining the highest possible price for his land. Further, if the first three points be established, the fourth point may readily be inferred, provided the purchases have notice of the facts involved in the first three points; but if the purchaser purchases in ignorance of any material part of those facts, it would be difficult, if not impossible, to establish the fourth point."

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The question whether a scheme has been created or not is therefore one of intention. As to the proof of such intention, Greene M.R. in White v. Bijou Mansions Limited (1938) Ch.351, cited at p.361 the following passage from the judgment of Lord Esher in Nottingham Patent Brick & Tile Co. v. Butler 16 Q.B.D., 784:

"The question, whether it is intended that each of the purchasers all be liable in respect of those restrictive covenants to each of the other purchasers is a question of fact, to be determined by the intention of the vendor and of the purchasers, and that question must be determined upon the same rules of evidence as every other question of intention."

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10 In the present case there is a sufficiently
defined scheme area, which is delineated on the plan
Exhibit C which was prepared for the common vendor,
and both the respondents and the appellants derived
title to their respective lots within that area from
the common vendor. The evidence on which the
respondents rely to establish a general scheme of
development in respect of that area consists of the
plan, Exhibit C, and three conveyances in identical
printed forms, namely the Albury, Hilton and Butler
conveyances. In each conveyance it is recited that
20 the lot of land intended to be conveyed by the
company, W.E. Brown Land Company Limited, is part of
a tract of land known as Westward Villas Subdivision
and First and Second Addition Westward Villas, which
has been laid out by the Company to be sold in lots
for building purposes according to a plan prepared
by W.E. Brown, Civil Engineer, dated February 1925,
and being No.21-C and now filed in the office of the
Surveyor General of the Colony (that is Exhibit C)".
30 It is further recited that some of the lots "have
been already sold and the conveyances thereof contain
covenants by the purchasers to observe conditions
and restrictions similar to those set forth in the
Schedule hereto". In clause 1 the vendor conveys the
relevant land to the purchaser "together with the
right to enforce for the benefit of the lot or parcel
of land intended to be hereby granted and conveyed
all covenants entered into by purchasers of other
lots or portions" of the Subdivision "for the
observance of conditions and restrictions similar to
40 those set forth in the schedule hereto." In clause
2 the purchaser as to the lot conveyed and the
vendor as to the lots of the Subdivision remaining
unsold covenant with each other that they and "all
persons deriving title under them respectively, will
at all times hereafter observe in respect of the
lots of land vested in them respectively all the
conditions and restrictions set forth in the
Schedule hereto, it being the intention of the
parties hereto that the said conditions and

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restrictions shall be mutually enforceable by and against all owners for the time being of the said lots of land respectively. In clause 3 the purchaser covenants with the vendor "(and so that this covenant shall, so far as practicable, be enforceable by the owners, occupiers and tenants for the time being of the said tract of land known as Westward Villas Subdivision and First and Second Addition Westward Villas which has been laid out as aforesaid), that all and singular the conditions and restrictions set forth in the Schedule hereto shall run with the land and shall bind the said lot or parcel of land intended to be hereby granted and conveyed and all subsequent owners, occupiers and tenants thereof". In clause 5 the vendor declares that "the purchasers his heirs, executors, administrators and assigns shall be entitled to the benefit of the similar covenants, conditions and restrictions entered into by any other purchaser or purchasers of any other portion or portions" of the Subdivision. In clause 6 the vendor covenants with the purchaser that the conditions and restrictions in the Schedule shall be included in all conveyances of all lots in the Subdivision except those lots in Blocks 2, 3, 4 and 5. Mr. Bethell for the respondents contended that the plan, Exhibit C, and the three printed conveyances in common form were sufficient to establish the creation of a building scheme by the common vendor in respect of the whole Subdivision.

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To the contrary, Mr. Newsom submitted first that there was no lotted plan within the meaning of Elliston v. Reacher: that Exhibit C is not such a plan since there is no evidence that it was exhibited in an estate office and that lots were sold on the face of it and, according to the note on the plan, the common vendor could alter the restrictions. It is true there is no evidence that a lotted plan was exhibited in an estate office, but there is no evidence to the contrary. Exhibit C is a lotted plan prepared for the common vendor for the development of the Subdivision and was lodged in the office of the Surveyor General, a place of public record where it could be inspected. On this aspect Tucker v. Vowles (1893) 1 Ch.195, to which we were referred as being closest to the present case, can be distinguished on the ground that there the lotted plan was originally prepared for the approval of the local sanitary authority. As to whether the lots were sold

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on the face of Exhibit C, the printed form of conveyance expressly referred to it and in the case of the Ocean conveyance of about three-quarters of the scheme area, a copy of Exhibit C was annexed to the conveyance. Although the note on Exhibit C indicates that the restrictions might be altered, the restrictions are expressly set out in the printed form of conveyance. Next, it was argued that there was no sale of the lots by public auction with published conditions and no evidence of the conditions of private contracts of sale and, accordingly, no evidence of communication to the public of an intention to create a building scheme. Those were factors to be taken into account when determining whether a building scheme had been established, but they were not in themselves evidence against the creation of a scheme: the whole of the evidence must be taken into consideration. Then it was submitted that clause 2 of the printed conveyance negatives an intention to create a building scheme since it restricts mutuality to the lots sold and the still retained lots, a perpetually diminishing area. It was said that clause 2 is otiose if there were a building scheme and we were referred to White v. Bijou Mansions Ltd. (1938) Ch.351. While it is true that in clause 2 mutuality is thus limited, I think that, when the conveyance is read as a whole, mutuality was expressed to apply to the whole area of the Subdivision. In White v. Bijou Mansions Ltd., in the clause in question the vendors covenanted that they would, at the request of the purchaser, Mr. Fellows, his heirs and assigns, "commence and prosecute all such legal proceedings as shall be necessary or proper for compelling the observance and performance of clauses 1 to 6 both inclusive by the person or persons for the time being owners of part or parts of the said Shaftesbury House Estate not hereby granted and assured". The scheme which the purchaser was there getting for his protection was that the vendors were to exact from future lessees or purchasers certain covenants, and the vendors agreed with the purchaser that, at the request of the purchaser, they would enforce them. Referring to the relevant clauses Sir Wilfred Greene, M.R., said this:-

"When one looks at Mr. Fellows' own conveyance, it bears on the face of it, so far as it is permissible to look at it for this purpose, what seems to be a very clear indication that

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it was not the intention of anybody that Mr. Fellows should be entitled to enforce these covenants direct, because the conveyancing machinery adopted is one under which the vendors agreed on subsequent sales to take covenants from the purchasers, and to enforce those covenants at the instance of Mr. Fellows. That was a special provision which Mr. Fellows got put into his conveyance, which does not appear in Mr. Nicholson's conveyance. That appears to me to be inconsistent with the view that Mr. Fellows was intended to get an independent right himself to sue subsequent purchasers on the footing that the original agreement was a sort of code that was going to be brought to the notice of all such purchasers."

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That is quite a different provision from clause 2 in the present case. It was further submitted that the Ocean conveyance, in which there were no covenants and no reference to a building scheme or restrictive covenants, is inconsistent with the existence of a building scheme. But the copy of the plan, Exhibit C, with the notes endorsed thereon, is some indication that the land conveyed was not considered to be free of restriction. It is of interest to note that in at least some of the subsequent conveyances of the appellants' lots reference is made to the restrictions imposed by W.E. Brown Land Company Limited. For instance, the conveyance dated 27th January, 1939, between the Ocean Company and Bahamas Limited of, inter alia, a substantial part of the Subdivision, including lots 14, 17 and 18, was subject to certain "restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company Limited which said restrictions and conditions still continue". Also, in the conveyance dated 17th January, 1968, from Anjask Limited to the appellants of lots 13 to 18 it is recited that the lots form part of an estate to be developed according to a general building scheme and to that end some lots are subject to certain restrictions and conditions corresponding to those set forth in the Schedule to the Albury conveyance.

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In my view the Albury, Hilton and Butler conveyances when coupled with the lotted plan, Exhibit C, constituted sufficient evidence to establish the existence of a building scheme for the Subdivision in

accordance with the requirements laid down in Elliston v. Reacher, the common vendor being W.E. Brown Land Company Limited. Taken together the recitals and covenants in the conveyances cover all the lots in the scheme area as to which there was to be reciprocity of obligations. I think it is a fair inference from the facts that the whole Sub-division was governed by a building scheme in which each purchaser was to enter into a liability, not only to his vendor, but also to the purchasers of other lots, which they could enforce against him. In Tucker v. Vowles (supra) on which counsel for the appellants relied, the trial judge was able to make a positive finding on the evidence that "there were no representations of any kind on the part of the vendors to any purchaser, so far as the evidence is before me, that the estate, or the plots marked out on the plan, was, or were to be bound by any conditions." That is far from the present case.

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The next question for decision is whether the Ocean Company had notice of the restrictions imposed by the building scheme or of the annexed covenants. They were purchasers of the legal estate in lots 13, 14, 17 and 18 for valuable consideration and, if they did not have notice, they, and their successors in title, were not bound by the restrictions imposed under the building scheme or by the annexed covenants. The onus is upon the appellants to disprove notice and the notice which must be disproved to make good the defence is actual or constructive notice. A purchaser is affected by notice of matters of which he has actual knowledge, or of matters of which his counsel, solicitor or agent has knowledge, or of which knowledge would have been obtained "if such inquiries and inspections had been made as ought reasonably to have been made"; section 57 of The Conveyancing and Law of Property Act (Cap.115). As to this defence the learned trial judge said:

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"As regards the point that Ocean and Lake View Company Limited bought without notice of the covenants and so were not bound, it must be noted that the building scheme began in 1925 and the Company's conveyance is dated 1935.

The plan to that conveyance refers to residential and commercial lots. Conveyances of other lots should, in the circumstances, have been examined

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at the time, and the position of the Ocean and Lake View Company Limited is, I think, in the circumstances, that of a purchaser 'affected by notice of matters of which knowledge could have been obtained on a proper investigation of title". (Preston & Newsom's Restrictive Covenants 3rd Edition, page 57). I note that when the Ocean and Lake View Company Limited sold Westward Villas subdivision to Bahamas Limited in 1939, reference was made to the W.E. Brown Land Company's restrictive covenants. When the property eventually came to the defendants, Texaco Antilles Limited, they had actual knowledge."

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I do not understand the learned judge to have meant that the appellants were bound because they themselves had actual knowledge; the chain would be broken if the Ocean Company did not have notice, either actual or constructive.

There is no system of registration of land in the Bahamas, only a system of recording of documents under The Registration of Records Act (Cap.193). It is a permissive Act which provides that documents as defined may be recorded in a Registry. By section 10 documents so recorded have priority in date of lodging for record. We were informed by Mr. Bethell that documents are indexed in the Registry under the names of the parties so that one must search against the name of the vendor and that a purchaser is obliged on normal searches of title to look, not only at the conveyances recorded in the Registry to his vendor, but also at all conveyances from his vendor to see whether the lot of land in question has been sold previously or has been mortgaged or otherwise encumbered. He referred to the somewhat similar system of registration in Middlesex and Yorkshire and cited the following passage from Gover on Advising on Title, 4th ed. p.158:-

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"In the case of freeholds and leaseholds situate in Middlesex and Yorkshire, a search in the local registry should be made, to see that no registered instruments are omitted from the abstract: Dart, 1223; see Land Reg. (Middlesex Deeds) Act, 1891; York. Reg. Act 1884, Deeds and documents disclosed by the register should be enquired for and examined: Kettlewell v. Watson, 26 Ch.D.501."

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In Kettlewell v. Watson which concerned the West Riding Registry Act under which memorials of documents can be registered, Lindley, L.J. delivering the judgment of the Court of Appeal said at p.508 of the report:

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10 "Neither can we accede to the contention that in register counties it is not necessary for a purchaser to enquire for or examine deeds memorials of which are registered. The registered memorials themselves give very little information, and the object of the statute seems rather to let people know what they are to inquire about than to dispense with inquiry respecting deeds and documents memorials of which are registered. On the one hand the register invites a purchaser's attention to the documents on it and on the other it limits his inquiry to these documents, unless he has notice of others from some other quarter. The common practice, moreover, certainly is in accordance with this view, and prima facie a purchaser of lands in a register county omits ordinary precautions if he makes no inquiry respecting the documents the existence of which is disclosed by the register."

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30 Mr. Bethell submitted that in the present case the lotted plan annexed to the Ocean conveyance, with the notes endorsed thereon, gave warning of a building scheme and restrictions and that the Ocean Company should have enquired as to the nature and extent of the restrictions. Had they searched in the Registry, as they should have done, at least the Butler conveyance, which was recorded on 19th June, 1934, would have been disclosed; the Albury and Hilton conveyances were not recorded. The Butler conveyance, which was in common form, would, he argued, have given them notice of the building scheme and the restrictions. They were therefore fixed with constructive notice of the building scheme and the restrictions. Mr. Newsom on the other hand contended,

40 first, that the notes on the plan annexed to the Ocean conveyance indicated that the proposals were still fluid and, therefore, negatived the existence of a scheme and, secondly, that the Butler conveyance was not one of the properly abstractable documents of title to Lots 13, 14, 17 and 18 and that registration is not notice to all the world of its whole contents. He cited the following passage from the Encyclopædia of Forms and Precedents,

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Vol.11 (1906 ed.) p.272:

"Registration in Middlesex is not in itself actual or constructive notice (Bedford v. Back house (1730, 2 Eq. Ca. Abr. 615, para.12; Re Russell Road Purchase Moneys, (1871) 12 Eq.78); but if the register is searched for the period covering the date of a registered instrument, the person searching would be deemed to have notice even though he omitted to find the entry (Hodgson v. Dean 1825 2 Sun. & St.221)"

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In Morecock v. Dickins, Amb.678, on which Mr. Newsom relied, it was held that registration in Middlesex of an equitable mortgage is not presumptive notice of itself to a subsequent legal mortgagee, so as to take from him his legal advantage.

The point is a difficult one, but I have come to the conclusion, though with some hesitation, that Mr. Bethell's submissions are correct. I accept that registration of a document under the Registration of Records Act is not of itself notice to all the world of its contents, but here I think that the plan of the Subdivision annexed to the Ocean conveyance did give warning of at least a possible building scheme and of restrictions affecting the Subdivision and that, in those circumstances, a proper investigation of title should have included a search in the Registry for any instruments relating to the scheme and the restrictions. In my view, in such a search the Butler conveyance should have been looked at and that conveyance gave sufficient notice of the building scheme and the restrictions. I am in agreement therefore with the learned Judge that the Ocean Company are fixed with constructive notice of the building scheme and of the restrictions.

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I turn now to the contention that the covenants affecting the appellants' lots were extinguished by unity of seisin. By 12th January, 1942, Chapmans Limited became the owners of both the appellants' and the respondents' lots and they did not begin to dispose of any of the lots until 12th November, 1951, so that there was unity of seisin of all the lots between those dates. The submission is that the benefit of a covenant, being analagous to an easement, is extinguished by the unity of seisin between the benefited land and the burdened land in the same way

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as an easement is extinguished by the unity of seisin and that the covenant does not revive if the land is subsequently separated into its original parts. The position as regards easements is succinctly set out in Cheshire's Modern Real Property, 9th ed., P.489, as follows :

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10 "Easements are also extinguished by unity of seisin that is to say if the fee simple of both the dominant and servient tenements become united in the same owner, all easements properly so called come to an end, for the owner can do what he likes with his own land and any right which formerly ranked as an easement because it was exercisable over another's land is now merely one of the ordinary incidents of ownership. An easement which has been destroyed by this union of title in one hand does not revive if the property is again severed into its original parts."

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20 There is apparently no direct authority either way on the point, but we were referred to opinions expressed in Jolly on Restrictive Covenants Affecting Land, 2nd ed., and Preston & Newsom, 1st ed. p.42, and to observations made by Lord Cozens-Hardy in the Court of Appeal in Elliston v. Reacher (1908) 2 Ch.665, and by Lord Simonds in Lawrence v. South County Freeholds Limited (1939) Ch.656. The relevant passage in Jolly on Restrictive Covenants is at page 52 and reads:

30 "Upon the analogy of an easement it is conceived that the benefit of a restrictive covenant would be merged and extinguished by unity of title and possession, if the dominant and servient tenements pass into the same hands, though Warrington J., in an unreported case, threw doubt on the accuracy of the proposition".

40 A similar view is expressed in Preston & Newsom, 1st ed., in a passage which we were informed was written by Mr. Preston who is no longer alive. In Elliston v. Reacher, where there was a building scheme, the plaintiffs, other than Dr. Elliston himself, failed on the ground that X, who had owned both their land and the defendants' land had sold the latter under fresh covenants. It was held that he had waived the original covenants and had substituted new ones. That decision may have been based on the doctrine

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of sub-schemes. In the Court of Appeal that part of the decision was not challenged and Cozens-Hardy, M.R., said he must not be taken as either differing from or assenting to it. But he went on to make certain observations in a passage which was cited and commented on by Lord Simonds in Lawrence v. South County Freeholds Limited (supra). Lord Simonds said at page 679 of the report:

"The unsuccessful plaintiffs (in Elliston v. Reacher) did not appeal, but on an appeal by the defendants against the decision in favour of Elliston an argument was addressed to the Court on which Cozens-Hardy M.R. said: 'Then it was argued somewhat boldly, that the whole scheme was at an end, if I follow the argument rightly, because of the four lots which were purchased by Mr. H.G. Cobbold; so far as appears, he was the only purchaser of the property; the other deeds were not produced, and it was unreasonable to suppose that there was any contract entered into between Mr. Cobbold as purchaser of lot 26 and Mr. Cobbold as purchaser of lot 27. I cannot assent to that. I do not think that is the true way to look at it. The very essence of every scheme of this kind is that it does not depend on the fact of there being separate purchasers of each lot, but it means that each lot, into whosoever hands it comes, whether into the hands of the man who has bought half a dozen lots, or originally to a man who has bought one lot from the vendor, shall be subject in either case to the burden and have the benefit of the restrictive covenant.' I do not find it easy to follow the argument to which reference is made, either from the argument of counsel as reported or from the statement of facts in the Court of Appeal, or in the Court below. But whatever this may be, it is clear that the point to which Lord Cozens-Hardy was directing his observations was not the relation inter se of sub-purchasers of an original lot where they have themselves entered into no covenants with their vendor, or with each other, but the relation inter se of purchasers of different lots which had originally been acquired by the same purchaser. I should respectfully agree that in such a case it would be impossible, the other ingredients of a building scheme being present, to exclude it either in whole or in part because more than one lot was originally purchased by the same person."

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10 It appears later in the judgment that Lord Cozens-Hardy based his reasoning on community of interest. To my mind different principles apply according to whether the benefit of a restrictive covenant arises by virtue of expressed annexation or under a building scheme. It may well be, and I do not decide the point, that in the former case unity of seisin destroys the benefit of the covenant. But where there is unity of seisin of some of the lots affected by a building scheme, I do not think that the covenant is destroyed. I think that observations of Lord Simonds in Lawrence v. South County Freeholds Limited, though obiter, afford strong support for the view I have taken. It is true that the issue he was discussing in Elliston v. Reacher was as to an original purchaser from the common vendor, but I cannot see any reason in principle why his observations should be so limited. I think they have a wider connotation and should apply equally to a subsequent purchaser. A building scheme is based on community of interest of all the owners of the lots, requiring reciprocity of obligations. The scheme would be destroyed piecemeal if each time there were unity of seisin of certain lots the mutual obligations were extinguished. A building scheme must stand or fall as a whole, whereas the other kinds of covenant stand or fall by themselves. I am therefore of the opinion that, since I have held there was a building scheme, unity of seisin of the appellants' and the respondents' land did not extinguish the benefit of the covenants.

40 I now deal with Mr. Newsom's submissions relating to the application and construction of paragraph 4 of the Schedule to the printed form of conveyance. As I understood Mr. Newsom, the submission that paragraph 4 does not bind Block 3 of the Subdivision in terms is founded on clause 6 of the common form of conveyance in which the vendor covenanted that the conditions and restrictions in the Schedule should be included in all conveyances of all lots in the Subdivision "except those lots in Blocks (2), Three (3), Four (4) and Five (5)." The conveyance is undoubtedly badly drafted but, to my mind, it is clear from the other clauses, and reading the conveyance as a whole, that the conditions and restrictions set forth in the Schedule were intended to apply, and did apply, to the whole of the Subdivision. It was also submitted that the stipulation in paragraph 4 that no public garage

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will be permitted on any of the lots of the Sub-division is merely a restriction on the common vendor's licensing power under paragraph 2 and does not affect a servient owner directly. Paragraph 2 provides that no residence or building shall be constructed or erected on any of the lots in the Subdivision "until after the plans, specifications and location of the building shall have been approved by the Company, their successors or assigns". I do not accept this submission. In construing a covenant it is the substance and not the form which must be given effect to. In my view the last sentence of paragraph 4 imposes an absolute prohibition on the erection of a public garage and is not merely, as submitted by Mr. Newsom, a personal undertaking by the common vendor to limit his licensing power. It is a true negative covenant. In Elliston v. Reacher the restrictive covenant which was enforced was similarly expressed namely that no hotel was to be allowed on any lot without the vendor's consent. The final question on this aspect is whether the premises come within the expression "public garage". The learned Judge held that they do. Having given careful consideration to the submissions of Mr. Newsom, I can find no good ground for differing from the conclusion of the learned Judge.

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In the circumstances I am satisfied that an injunction is the appropriate remedy and that its terms are not too wide.

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For those reasons I would dismiss the appeal with costs.

PRESIDENT

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10 The appellant company is the owner of 6 lots of land at Westward Villas in the Island of New Providence on which it has dug foundations preparatory to the erection of a commercial building. The respondents also own land at Westward Villas on which there is a house which is used for residential purposes. The appellant company's activities have provoked a dispute between the parties because the respondents claim that they are in breach of certain restrictive covenants the benefit of which they are entitled to enjoy.

20 Both the appellant company's and the respondents' lands originally formed part of a tract of land the property of W.E. Brown Land Co. Ltd. (hereinafter sometimes referred to as the "Brown Co.") which that company began to dispose of some 40 years ago. The land was lotted on a plan (Exhibit C) which was prepared in 1925 and filed in the office of the Surveyor General. The earliest conveyance of which there is any mention in the evidence is dated 5th May, 1927 when lots 15 and 16 in Block 3 which adjoins the respondents' land were sold to Albury. These 2 lots together with lots 13, 14, 17 and 18 in Block 3 have, as the result of a number of transactions, come into the hands of the appellant company. The respondents' land comprises lot 39 and the eastern half of lot 40 in Block 3. Their original predecessor in title was Hilton who purchased lots 39 and 40 from the Brown Co. in 1933.

40 The respondents' claim is for damages and an injunction to restrain the building of a gas station on lots 13 to 18 and the carrying on of any trade or business on that site. This claim was based on the existence of a building scheme said to have been created by the Brown Co. The trial Judge found in favour of the respondents and granted the injunction asked for. On appeal the appellant company has again disputed the existence of a building scheme on which the respondents rely but the respondents now further contend that the restrictive covenants which protect their land are annexed covenants and that they are entitled to succeed even if the existence of a building scheme has not been established.

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The conveyance to Hilton in 1933 is in printed form as was the conveyance to Albury in 1927. Both these conveyances refer to the 1925 plan (Exhibit C) and contain the controversial covenants. The only other conveyance in printed form of which there has been any evidence is the conveyance to Butler in 1928. The area of land covered by the plan comprised 520 lots. By 1935 some 100 lots had been sold and in that year the remaining lots (including lots 13, 14, 17 and 18) were acquired by Ocean and Lake View Co. The Brown Co. subsequently went out of existence. The conveyance to Ocean and Lake View Co. contained no restrictive covenants.

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It has been submitted by the appellant company that the respondents have not proved that a building scheme existed; that the well-known conditions laid down by Parker, J. in Elliston v. Reacher (1908) 2 Ch. 374 have not been satisfied; and that, moreover, some of the evidence itself negatives the existence of a building scheme.

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In Elliston v. Reacher the land to be sold was plotted out in numbered lots which were shewn on a plan on which the conditions on which it was proposed to sell the estate were printed. The plan was identical with the plan annexed to the engrossment and the restrictions contained in the conditions were the same as the restrictions contained in the First Schedule to the engrossment. Parker, J. found that it had been sufficiently established by the evidence not only that the predecessors of the parties had notice of the intention of their common vendors that the restrictions in question should enure for the benefit of all the lots offered for sale, but that they had made their respective purchases on that footing. In this case the parties have derived their titles from a common vendor, the Brown Co., the land which the Brown Co. was selling is a defined area and was clearly lotted but it has been argued that the 1925 plan of the land (Exhibit C) was made for survey purposes and is not the sort of plan which was accepted in Elliston v. Reacher; that there is no evidence that any lots were sold on the faith of it; and that the note on the plan concerning Blocks 3 to 5 suggests that the lotting was provisional and the scheme subject to change. Mr. Newsom also relied on the decision in Tucker v. Vowles (1893) 1 Ch. 195 in which the plan had been prepared for the purposes of certain bye-laws and

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contended that there was no evidence of communication to the public of an intention to establish a building scheme.

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I derive very little, if any, assistance from Tucker v. Vowles and I do not think that the decision in that case strengthens in any way the criticism of lack of communication to the public of the conditions on which the Brown Co. lots were to be sold. In fact the Brown Co. intended to cater to a very special clientele and an invitation to the general public to participate in the proposed development was clearly not contemplated. I am not prepared to say that the lodging of a plan in the office of the Surveyor General would not have served the same purpose as publication in an estate agent's office or at a sale by auction in the case of an ordinary building scheme but the Brown Co. development was not such a case and the considerations in Tucker v. Vowles, in my opinion, have no application to the circumstances with which we are concerned. I see no reason, however, why, apart from the question of enforceability of covenants into which I need not enter, a valid building scheme should not operate between carefully selected purchasers by means of a series of private contracts and I turn to the other strictures of the appellant in which I think there is considerable substance.

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There is no evidence that the printed form used for the conveyances to Albury, Butler and Hilton was a common form. Exhibit G, the 1927 conveyance cannot have been the first conveyance of any portion of the Brown Co. estate for the second recital in it refers to conveyances to previous purchasers. It is true that these earlier conveyances are said to contain conditions and restrictions similar to those governing the Albury conveyance but nothing is known about the extent of the similarity or the number or identity of the lots affected. In the printed form there is no mention of a building scheme in operation. On the contrary, although there is a statement of intention that the restrictions and conditions contained in the schedule are to be mutually enforceable by the Brown Co., its successors and assigns, and the purchaser, his heirs and assigns, the burden of the restrictive covenants is imposed on each lot sold and the benefit conferred on the lots unsold at the date of purchase: the scheme does not provide that each lot that is sold shall be subject to the burden and have the benefit of the restrictive covenants. This

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results in a contradiction of the professed intention and an absence of reciprocity of benefit and burden over the whole area which is not to be accounted for by the exercise of dispensing power and which, in my view, is fatal to the existence of a building scheme, and the sale to Ocean and Lake View Co. of the greater part of the estate without restrictive covenants supports this view.

The existence or non-existence of a building scheme became of secondary importance, however, in view of the respondents' alternative contention that they are entitled as against the appellant to the benefit of the restrictive covenants in favour of all the land retained by the Brown Co. taken at the time of the sale of lots 15 and 16 to Albury in 1927 and of lots 39 and 40 to Hilton in 1933. Of the land retained by the Brown Co. in 1933 lots 14, 17 and 18 came into the hands of Chapman Ltd. in 1939. Chapman Ltd. purchased lots 15 and 16 in that same year and, in 1942, lot 13. The appellant conceded that the burden of the covenants devolved on lots 15 and 16 and that the same covenants were annexed to the respondents' land in 1933 but submitted that lots 13, 14, 17 and 18 were freed of the burden of the covenants in 1935 when Ocean and Lake View Co. purchased them without notice of the covenants and that the benefit of the covenants entirely ceased by reason of unity of seisin when Chapman Ltd. became the owner of all the lots which now comprise the appellant's and the respondents' holdings. Mr. Newsom submitted further that the covenants did not in any event restrict the building operations which the appellant had in mind.

It was admitted by the respondents that Ocean and Lake View Co. did not have actual notice of the Brown Co. covenants when it purchased lots 13, 14, 17 and 18 but it was urged that there was constructive notice of them because, it was said, the system of registration in the Bahamas was one of registration of documents and not of title and that a prudent search against the name of Brown Co., the original owner of the lots, would have revealed the restrictive covenants contained in the common printed form of conveyance used by Brown Co. in sales of lots forming part of Westward Villas. Reference was made to the system of registration in Yorkshire in the United Kingdom many years ago and it was maintained that a similar situation obtained in the Bahamas.

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For the appellant Mr. Newsom drew attention to the similarity between the provisions of the Conveyancing and Law of Property Act of the Bahamas, Chapter 115, and those of the United Kingdom Act of 1881 which deal with registration of deeds and pointed out that these provisions had a common object, namely, the priority of registered over unregistered deeds. He relied on the decision in Morecock v. Dickins, 27 E.R. 440, in which the implications of registration in Middlesex of an equitable mortgage was discussed. In that case it was sought to fix a mortgagee with constructive notice of a security arising from the circumstances of a deed having been registered at the time he took the mortgage, the argument being that registration of the security was notice of itself. The Lord Chancellor refused to disturb what he considered to be settled law and held that the relevant legislation did not provide for any such purpose. I think that that decision should be followed in the present case and I can find no ground for saying that Ocean and Lake View Co. was under an obligation to inquire into all the Brown Co. dispositions of lots. It would be alarming if it were otherwise.

The construction to be placed upon the Brown Co. covenants gave rise to lengthy argument. Paragraphs 1, 2, 3, 6, 7, 8 and 10 of the schedule of conditions and restrictions are in imperative form and leave no doubt as to their meaning but in paragraph 4 with which we are particularly concerned there is a departure from the precise language of prohibition. It has been strenuously contended by the appellant that the restrictions contained in the last sentence of this paragraph affects building and not user, that they operate as a limitation upon the licensing power of the vendor and are not covenants enforceable by the respondents. It was clearly the vendor's intention to accord special treatment to the lots in Blocks 2 to 5 but in that paragraph 2 of the schedule required prior approval of plans, specifications and location before construction of any building could be effected it is not easy to see the need to exact a covenant from a purchaser against the erection of specified types of buildings nor the reason why the mandatory form of words used in other paragraphs was not adhered to if an absolute and perpetual prohibition was contemplated. It is convenient, however, to consider first what

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the restriction concerning a public garage
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A building would, presumably, become a public garage only when used, or, at least, threatened to be used, as such. The erection of a public garage therefore combines the conceptions both of construction and user. In giving the word "garage" the statutory meaning which it bears in the Garages Licensing Act, Chapter 287, the trial Judge purported to be interpreting the mind of the vendor. This was an impossible task and, in my view, the test to be applied should have been objective. What had to be ascertained was what the ordinary man in 1927 understood by the use of the word and as to this there was the uncontradicted evidence of the witness Malcolm which the Judge does not appear to have considered at all. Malcolm who has been in the gas filling service since 1922 said that a garage undertook repairs to the bodies and engines of motor vehicles and was not the same as a filling station at which minor repairs such as repairs to tyres were done. At the service station which the appellant proposes to erect no mechanical repairs or bodywork will be undertaken and there will be no storage for vehicles.

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There is therefore no threatened breach of a covenant against erection of a public garage and the question whether or not there was an absolute prohibition against such erection does not call for determination. The conclusion at which I have arrived also renders discussion of the topic of unity of seisin unnecessary and I would have allowed the appeal.

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(signed) C.V.H. Archer, J.A.

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10 The respondents to this appeal, Mr. and Mrs. Kernochan, through a conveyance of the 9th April, 1962, acquired by purchase the ownership of a house with its land in the western district of New Providence Island. It was considered to be a good place in which to live being in a residential neighbourhood. As Mrs. Kernochan said in evidence, they felt it was "nothing but safe", meaning that the residential character of the area would be maintained: their deed of conveyance (exhibit R.3) contained reassuring provision as to continuing covenants upon which such a view would seem to be fairly based. They occupied the house except when absent during the summers in the United States; on other occasions it appears to have been let.

20 By a conveyance dated the 17th January, 1968, the appellant Company, Texaco Antilles Ltd., obtained a plot of land situated immediately behind and to the north of the respondent's residence. The purpose of this acquisition was to build premises suitable for the fuelling, lubrication, washing, servicing of, and effecting minor repairs to, motor vehicles driven in by members of the public. Excavations were promptly begun and steps taken towards the erection of the building.

30 Not unnaturally the respondents took strong objection to having this construction, with the activities entailed when put to use, facing and within a few yards of the patio and outdoor area of their abode. They were not mollified by the offer to put up a seven foot high wall on the dividing line between the two properties. The evidence of Mr. Brown, a real estate agent and senior Government Assessor, and that of Mrs. Kernochan herself, indicates that the attitude of the respondents was far from being unreasonable. It was a most unpleasant and disturbing prospect from the householder's

40 viewpoint, involving unsightliness, noise, smell, nocturnal lights, possible danger, and reduction in property value. Such, for present purposes, is all that need be said about that.

The respondents took proceedings seeking an injunction to prevent the building being erected and the appellant's land being put to use to provide a

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public garage. They based their case on the alleged breach of a restrictive covenant in the following terms:

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No machine shop, public garage or manufacturing establishment will be permitted on any of the lots of Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid.

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They succeeded in the action before the Supreme Court and obtained the relief as sought. Cunningham Smith J. came to the conclusion that the two properties were included in an estate for development according to a general building scheme within Elliston v. Reacher (1908) 2 Ch. 374; and the "local law" applicable under the scheme included the covenant aforesaid, the benefit of which ran with the respondents' land, the burden resting with that of the appellant. As to part of the appellant's land (lots 15 and 16) the covenant was also held to be annexed to the benefit of the respondents parcel, and burden of the appellant's, and there is now no dispute as to this - subject of course to certain defences raised. The particular type of building projected and the use to which it was to be put, was held to constitute a "public garage" within the meaning of the stipulation. As to the allegations in defence of acquiescence and change in the character of the neighbourhood, the findings went against the appellant and nothing now turns upon that.

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The appellant questions the decision of the lower Court upon several grounds. In the course of argument upon the respondents' cross-notice introducing a new and alternate submission, it was conceded by the appellant that, apart from any building scheme, the covenant, if it amounted to such, was also annexed to the benefit of the respondents' land so as to affect with its burden the other part of the appellant's land (lots 13, 14, 17 and 18) to that part already mentioned above (lots 15 and 16) as subject to the covenant as being annexed. It was submitted, however, that in the circumstances this did not avail the respondents, though it rendered the question as to whether or not it was correctly decided that a building scheme had been created of little moment. Nevertheless it seems to me that this matter of a building scheme or no building scheme must be examined and determined if for nothing else than because an affirmative answer could have an important bearing when it comes to adjudgment upon

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the validity of the appellant's contention as to the extinguishment of the covenant by reason of unity of seisin.

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10 Such is the very broad outline and it is now
necessary to set out the details. There was a common
vendor, namely, W.E. Brown Land Co.Ltd., to which I
will refer as "Brown". There is a plan, exhibit C,
dated February, 1925, which shows the Brown property
described as "Westward Villas Subdivision and First
and Second Addition Westward Villas" laid out in
lots. The land owned respectively by the parties
lies within Block 3 of the Westward Villas Sub-
division, the respondents' parcel being lot 39 and
the adjoining half of lot 40, and that of the
appellant being the lots numbered 13 to 18 inclusive.
The respondents' root of title lies with a conveyance
of 1933 from Brown to T.S. Hilton ("the Hilton
conveyance") proved by secondary evidence; it is
accepted that the same printed form was employed as,
20 for instance, for the purpose of the next two
indentures to be mentioned. The appellant's root of
title as to lots 15 and 16 is to be found in a
conveyance of 5th May, 1927, Brown to J. Baird
Albury ("the Albury conveyance") annexed to exhibit
M. There is also a conveyance, exhibit L, Brown to
H.F. Butler of 22nd March, 1928, concerning lot 31 of
Block 4 ("the Butler conveyance") offered in proof of
a building scheme and which was recorded in the
Registry of Records. As to the appellant's
30 remaining lots, that is, 13, 14, 17 and 18, the
holding from Brown commences with an indenture of
3rd April, 1935, that does not contain restrictions,
conveying to Ocean and Lake View Co. Ltd. (exhibit
K - "the Ocean conveyance"), together with other
property, not only the appellant's four lots just
referred to but also the remaining unsold lots
being around 400 in number going to make up the
Westward Villas Subdivision with its two Additions.
It appears that Brown at this time went out of
40 business and the Ocean and Lake View Company, so to
speak, took over as a result of this transaction.
When this latter Company came to transfer the
appellant's lots 14, 17 and 18 by an indenture of
27th January, 1939, (exhibit N) to Bahamas Ltd., the
"restrictions and conditions imposed on the said
hereditaments by the W.E. Brown Land Company Ltd."
were expressly recognised and stipulated to be still
continuing. The conveyance of 12th January, 1942,
under which the appellant's lot 13 came to Chapmans

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Ltd. is not available but there is no suggestion that similar recognition was not expressly accorded. And when Chapmans Ltd. came to dispose of all the appellant's lots 13 to 18 to Bahamian Industries Ltd. by a conveyance of 12th November 1951, (exhibit I) reference is made to the lotting plan exhibit C and to the continuing Brown restrictions. But the Ocean conveyance, in which no restrictive covenants are found, is relied upon by the appellant for two purposes: firstly, as indicative that there was never any building scheme intended by Brown; and, secondly, as giving rise to the situation that the Ocean and Lake View Company was a bona fide purchaser for value without notice so that the burden of the relevant covenant did not run with lots 13, 14, 17 and 18. Both these propositions were found unacceptable in the circumstances by the trial Judge and they will be examined in due course.

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The next circumstance of importance arising out of the chain of title is that by the 12th January, 1942, all the lots of both the respondents and the appellant became vested through conveyances in the ownership of Chapmans Ltd., which did not divest itself of any of the lots until it entered into the conveyance of the 12th November, 1951, aforesaid, effecting a severance of the six lots coming eventually to the appellant. In 1954 Chapmans Ltd. sold off the two lots in which the title has descended to the respondents and the Brown restrictions were again declared to be continuing as attached to the land (exhibit F8). It is here of course that the submission based on a complete unity of seisin extinguishing the covenants arises.

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But the first question to be decided is whether on a correct construction of the relevant contents of the printed form of indenture on which the respondents have founded their case, it can be held that there is any restrictive covenant at all prohibiting a public garage on any of the lots. I have already quoted the last sentence of paragraph 4 of the Schedule headed "Conditions and Restrictions" which the respondents rely upon as a binding covenant of a restrictive nature. In form I would think that it sufficed for this purpose - just as much as it is a good and absolute restriction created under paragraph 5, where it is provided that: "No outside toilet will be permitted

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in any part of said Westward Villas Subdivision...." But it is argued that having regard to the larger context of this peculiarly drafted document, no such covenant as alleged was intended or brought into existence; and that at most, if it is a good restrictive covenant, it goes to restrict building as such and consequently the terms of the injunction granted were too wide as going also to user.

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10 The first part of clause 6 of the printed form (by which I mean throughout the form of conveyance used by Brown - see the Albury and Butler conveyances and the evidence as to the Hilton conveyance - provides that:

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20 "6. The Company, for themselves, their successors and assigns, do hereby covenant with the Purchaser, his heirs executors, administrators and assigns as follows: that the conditions and restrictions set forth in the Schedule hereto shall be included in all conveyances of all lots in the Westward Villas Subdivision ... aforesaid, except those lots in Blocks Two (2), Three (3), Four (4) and Five (5)"

Then there is paragraph 4 of the Schedule containing what is alleged to be a good covenant entitling the respondents to sue. It reads:

30 "4. No more than one private residence and one garage or one combined garage and servants' quarters shall be built on any lot except on the lots in Blocks Two (2) to Five (5), inclusive. The Company reserves the right, however, to remove the restrictions from any or all of the lots of the said Blocks Two (2) to Five (5), inclusive, to allow the building upon them of hotels or apartment houses or stores for the sale of provisions or other merchandise, but said stores shall be permitted to be built only on the northern half of Blocks Three (3) and Four (4). No machine shop, public garage or manufacturing establishment will be permitted on any of the lots of Westward Villas Sub-division and First and Second addition Westward Villas aforesaid".

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It has been observed that all the lots with which we are concerned lie within Block 3. On the

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plan the northern halves of Blocks 3 and 4 carry the legend "Commercial". The argument for the appellant is that within the framework of the restrictions it was never intended that the whole area should be reserved for residential purposes. Whatever else clause 6 may mean, it does not mean that Brown assumed any obligation at all to impose covenants affecting Block 3. Paragraph 4 of the Schedule created or imposed no restrictive covenant of the nature relied upon by the respondents: it was concerned throughout with the power of the common vendor, Brown, to allow certain buildings to be put up at his discretion and to restrict this power as to allowing public garages etc. on any part of the entire estate. The paragraph must be read as a whole and at most the last sentence thereof went solely to restricting the licensing power of the common vendor and is enforceable against him only - it is a covenant as to how the common vendor will use his licensing power to permit particular kinds of buildings.

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Cunningham Smith J. in dealing with this submission said in judgment - "All that the Brown Land Company Limited reserved, as I read the Scheme, was the right to allow a certain class of buildings to be set up - 'hotels or apartment houses or stores for the sale of provisions or other merchandise' only in a specified area, with consequential alterations in building specifications. But the restriction against the building of a public garage on any of the lots in the subdivision remains". Equity looks to the substance rather than to the form. The drafting is no doubt clumsy, but in my opinion there is nothing in the wording to establish that the intention was that Blocks 2 to 5 should not be subject to restrictive covenants. Reading the printed form of conveyance as a whole I cannot accept this as a true construction. The excepting words in Clause 6 were, I believe, intended to be bound up with and related to the express reservation of right contained in paragraph 4 of the Schedule containing conditions and restrictions. A certain kind of user was permissible as to Block 3 and the conditions might be relaxed by Brown to the extent specified in paragraph 4; but the express stipulation prohibiting, inter alia, a public garage on any lot of the whole area Brown was putting up for sale remained untouched and untouchable, and, as a matter

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of construction, may be availed of by the respondents as a restrictive covenant affording the protection that such an interest confers. Clause 6, I think, simply reveals the intention to effect a form of saving as to the right of variation of restriction reserved by paragraph 4 of the Schedule in regard to Blocks Two to Five. The lots in these four Blocks were as fully entitled to the benefit of the interest created by the final negative provision in paragraph 4 as any other lot offered for sale under the terms of this printed form.

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There is a further point of construction arising which concerns the question whether the building the appellant proposes to erect is a public garage within the meaning of the covenant. The Judge arrived at the firm conclusion on the evidence that it would be such a public garage. It was for use by the public. It is not to provide an enclosed shelter where motor vehicles can be housed, locked up or stored or machinery for heavy repair work installed. Minor repairs are to be carried out; there will be petrol storage tanks and pumps for fuelling; a store for the sale of lubricants and other motor necessities; a room for a compressor; a workshop for the carrying out of the repairs, mainly of tyres, and a hydraulic lift to raise cars for greasing and oiling; and washing facilities; these latter facilities being available in an area open at the sides where the shelter of a roof is afforded; there is also a roof that would shelter cars on the front portion. Four cars could be taken at one time at the rear - three for washing and one for greasing.

The submission is that the building is not a garage because cars could not be housed there or mechanically repaired - apart from repairs of a minor nature; and that it is a building for which no garage licence is required having regard to the Garages Licensing Act, Ch.287, in section 2 whereof "Garage" is defined to mean "any premises used for the repair of vehicles for a profit". But I do not think that a definition for particular statutory purposes affords any real help. The degree or nature of the repairs to be carried out is surely not the whole test when it comes to a question as a matter of ordinary language: What is a garage? No doubt these premises could, as a

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matter of modern usage, be heard to be described as a filling station, a petrol station, a gas station or, as the appellant seems to prefer, from Francis Von Schilling's testimony and an entry on the fact of the plan of the building, a service station. It would also be called a garage, and I do not think loosely or inappropriately having regard to the nature of the premises and the activities to be carried on there entailing the keeping of cars at least temporarily on the premises. I would have thought that this was precisely the sort of thing that would be sought to be guarded against in the building up of a primarily residential area of villas. As the learned Judge said in judgment - "By the use of the word "garage" in 1925, I cannot think that the Common Vendor intended simply a public shelter for motor vehicles. That in itself might have been quite innocuous. If he could have foreseen 40 years later on, no doubt he would have been more expansive but I am absolutely certain that when he used the word "garage" what he had in mind was a place where cars were kept and repaired and petrol and oil were stored. What is proposed to be set up is a public garage, call it what you will, and I have no hesitation in finding in favour of the plaintiffs on this point". With respect, I am in entire agreement and find no substance in this ground of appeal.

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That brings me to the question as to whether the evidence is sufficient to establish that a scheme of development - a building scheme - existed at all, for it is the appellant's contention that the material afforded is far too scanty and jejune to disclose any necessary intention to create such a scheme. But before going into that, which I believe is now accepted to be only of primary importance in so far as it may affect the proposition offered by the appellant as to unity of seisin, I wish to make the position clear - I have already made some reference to it - as to how the case rests in regard to covenant annexed. Here there is no dispute. The respondents' lots 39 and half of 40 have the benefit of the covenant through the Hilton conveyance of 1933 from Brown; whether this dominant interest still runs with the land because it came together with the servient interest in the hands of Chapmans Ltd. as owner of the whole land has yet to be determined. The Appellant's lots 15 and 16 carry the burden of the covenant through the Albury conveyance of 1927 from Brown; and here

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again the question arises as to whether such lots were freed of the burden because of a unity of seisin in Chapmans Ltd. The appellant's further lots 13, 14, 17 and 18 bore the burden of the covenant as land retained by Brown when the earlier conveyances (including the Butler conveyance of 1928) were made and Brown under the printed form used for these indentures had covenanted in regard to lots remaining unsold at the time of their execution. Then there came the Ocean conveyance of 1935 from Brown under which these four lots passed to the Ocean and Lake View Company. At this point the question comes up as to whether the burden devolved on the Ocean and Lake View Company unless it had notice: if the defence of bona fide purchaser for value without notice fails, then the appellant falls back upon the submission as to unity of seisin, since, as has been seen, these lots, and all the other lots with which we are concerned, came to Chapmans Ltd., which held them in complete ownership for about ten years.

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One cannot escape the knowledge that development schemes, particularly of a residential building character, are a noticeable feature of the Bahamas' landscape and of the windows of agents offices in Nassau's arcades; but this of course cannot be allowed to influence the reaching of a conclusion as to the intention to create a building scheme, which must be determined on the evidence and facts as proved. I agree that the recital quoted in the judgment of the Court below from the indenture of 17th January 1968, conveying the six lots 13 to 18 to the appellant is of no probative value. It may have been referred to as indicating that the appellant was not left in ignorance as to the history in devolution of the land it was buying. But to discover whether there was in fact a building scheme one must get back to the beginning.

There is the elaborately lotted plan, exhibit C, which was filed in a public office, namely, the Surveyor Crown Lands Office, Nassau, as Plan 21-C, which shows a clearly defined and laid out area as the Westward Villas Subdivision with its two Additions. On foot of that plan, as appears from the recital in the printed form conveyances, the lots were sold. There was the common vendor, Brown, and the question is whether he has so dealt with his land as to constitute a scheme of development affecting it. As Clauson J. said in Torbay Hotel

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Ltd. v. Jenkins (1927) 2 Ch. 255, such a scheme arises where the owner of a defined area of land - "deals with the land on the footing of imposing restrictive obligations on the use of various portions of it, as and when he alienates them, for the benefit of himself (so far as he retains any of the land) and of the various purchasers inter se". This, on the respondents' submission, is precisely how Brown dealt with the lotted land, and reference is made to the recital and clauses in the three common form conveyances to Albury, Hilton and Butler.

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As to the "revolting" clause 7 of the printed form, which is said to be inconsistent with a building scheme - it is surely a provision that would be without effect in any conveyance - the Judge expressed a view amounting to this, that if a certain provision must fall to the ground as being repugnant, the whole structure of restrictive obligations did not fall with it. I do not think myself that clause 7 would cause the scheme to fail and I consider that it can be left in isolation as being of no help one way or the other: I do not think that it is enough in itself to establish that the sole intention of the common vendor in entering into these transactions of sale with covenants was to benefit himself. As to clause 2, I admit to difficulty in appreciating the argument that the intention to create a building scheme is actually negatived by this clause, which is said to restrict mutuality to the lots sold and the still retained lots, a perpetually diminishing area. No doubt the recital of intention and the clauses going to mutuality and reciprocity of obligation could be much perfected as a matter of drafting for the setting up of a building scheme; but it seems to me, though I may well be wrong, that the clause does not have the effect that is contended adverse to the intention to create such a scheme. I think perhaps the main point of submission against a scheme relates to the lotted plan. It was not in fact altered and was employed as the basis for the sale of lots, but it bears upon its face the note - "The above map is a proposed general plan of development of the land shown thereon. Until a plan covering any portion is filed for record the plan of development of said portion may be changed subject to the provisions of any contracts in writing expressly made relating thereto".

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There is something there pointing to an intended scheme of development; but the suggestion is that this was really no more than a plan of an administrative nature made for public survey purposes; it was also open to be changed and did not provide for a definite and certain lotting. It was therefore not the sort of plan that could properly be taken to assist in proof of a building scheme. Tucker v. Vowles, (1893) 1 Cah. 195, has been referred to as authority governing circumstances said to be the closest to those in the present case. In that case the plan showed the proposed roads and drainage works and forty-six plots. Upon each plot so represented, except one, there was indicated in red the site of a semi-detached house but not of any other building. It was proposed for the main purpose of submission to an Urban Sanitary Authority as required by their bye-law; but the grantor's solicitor had, for his own purposes, hanging up in his office a smaller portion of that plan - that is to say, a portion showing simply the estate, and into what plots it was proposed at that time to divide it, and indicating, generally speaking, that it was contemplated houses should be erected on each plot but one. There was also a printed form of agreement prepared by the solicitor from an old form he had by him, merely to save him trouble in preparing, from time to time, the agreements which he thought would from time to time be come to between the vendors and purchasers of different lots, no doubt in the hope that in the majority of cases the greater part of the print might be found useful. It was used without instructions from the grantors, and its use was for convenience only, and alterations and material additions were made on it in writing as occasion required. Moreover the plan upon the agreements, when the vendors came to deal with individual purchasers, did not show the whole estate or all the plots, and did not, on the few plots shown, which were only those immediately surrounding the plot sold, show any house at all. Romer J. decided on the evidence that the vendors did not contemplate that they should be so rigidly bound by the plan or by the printed form of agreement as was suggested by the plaintiffs. The facts of the case did not justify the conclusion that any definite scheme of building, as the plaintiffs alleged, was ever come to by the vendors.

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At this point I will simply say that though the

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evidence in the instant case may be open to criticism as being fairly thin, it is not, in my opinion, anywhere near the circumstances that fell to be adjudicated upon in Tucker v. Vowles. The plan, exhibit C, shows a meticulous numbered lotting on a definite defined area. There is nothing to show that it was made mainly for an administrative purpose or to seek the approval of some authority. It was filed in an office open to the public as an office of land records - surely a natural place for it to be filed - and no suggestion was put in cross-examination of the Crown Lands Office Surveyor, Mr. Garroway, that it was put there for any other purpose than affording a safe and appropriate place for record and availability for inspection. There is the reservation on the face of this plan as to possible change of any portion covered by the general plan of development, and this may introduce a doubtful factor; but I do not think it is fatal because it refers to change in a lotting within the defined area which is left unaffected. In fact no change was made. The vendor stood on the general plan and the printed form conveyances show that purchases were made on foot of that plan showing all the lots and recited to be filed in the office of the Surveyor General; and it was used again without alteration (except for colouring in to denote lots sold) ten years later when Brown disposed of the remaining lots unsold (the bulk of the estate) to Ocean and Lake View Ltd. (see "B" to exhibit K). Of course this last transaction, under which Brown apparently went out of business as a developer and the Ocean and Lake View Company took over the title to the remaining lots, is relied upon as another factor pointing to the absence of a scheme because a different form of conveyance was used and the covenants did not appear. The learned Judge disposed of this difficulty by saying - "The original conveyance in favour of the Ocean and Lake View Company was a mere disposal of property, and the purchasers took the land subject to the covenants imposed by W.E. Brown .Company Limited in accordance with the building scheme". Counsel for the appellant enquires: What does this mean? I am not clear; and I do not think that any explanation has been offered by the other side; but I imagine it was intended to mean that a transaction had been effected by which the Ocean and Lake View Company had acquired all the retained lots of land in the development scheme area and had replaced Brown as the original common vendor for the disposal of such lots. The appellant's case

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is, that here all you have in proof of a scheme is a plan and three original conveyances (Albury, Hilton and Butler) and against them the Ocean conveyance years later containing none of the relevant stipulations and therefore, it is said, going to negative the intention of having a scheme. There was no contract of sale, no brochure, no auction, no plan in an agent's office ... And the Courts, as the decided cases on development schemes are said to reveal, are exceedingly jealous when it comes to the matter of proof, the requirement of minute analysis and the necessity for precision.

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I need not refer again to the requirements as laid down in Elliston v. Reacher, which have been discussed at length in the course of argument. In Lawrence v. South County Freeholds (1939) Ch.656, 668, Simonds J. said:

"A building scheme is something which emerges from the plan in which the property is developed. The rights created by a building scheme are not conferred by contract between the parties. There must therefore be exactly defined (1) the parties bound, (2) the area, and (3) the covenants. Every purchaser must know the exact area over which the building scheme prevails. In Kelly v. Barrett (1924) 2 Ch. 379, and Reid v. Bickerstaff, (1909) 2 Ch. 305, the scheme put forward failed, because there was no definite plan. There must be full knowledge and acceptance of the position as being a member of a band of purchasers. Here Wisden, the original purchaser, was not a party to any of the subsequent deeds, with two exceptions. There is a reference to a ground plan of the property, but none to any plan showing the plotting. There must be a definite plotting of the area to be subject to the scheme before the property is put on the market, Kelly v. Barrett (supra); Osborne v. Bradley per Parwell J., there is no such plan in this case".

In White v. Bijou Mansions Ltd. (1938) Ch. 351, 362-3, Greene M.R. said as follows:

"... there are certain matters which must be present before it is possible to say that covenants entered into by a number of persons, not with one another, but with somebody else, are

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mutually enforceable. The first thing that must be present is in my view this, there must be some common regulations intended to apply to the whole estate in development. When I say common regulations, I do not exclude, of course, the possibility that the regulations may differ in different parts of the estate, or that they may be subject to relaxation. The material thing I think is that every purchaser, in order that this principle can apply, must know when he buys what are the regulations to which he is subjecting himself, and what are the regulations to which other purchasers on the estate will be called upon to subject themselves. Unless you have that, it is quite impossible in my judgment to draw the necessary inference, whether you refer to it as an agreement or as a community of interest importing a reciprocity of obligation ... The argument ultimately came to this, that it is in the original agreement that the regulations common to the estate are to be found. We were invited to assume that every purchaser on the estate bought with knowledge of the terms of the restrictive covenant in the agreement and with knowledge of the fact that every other purchaser had entered into a similar covenant, or would in the future enter into such a covenant. Unless it is possible to draw an inference of that kind, it appears to me that the principles of the cases which have been referred to cannot possibly apply. In the present case I am quite unable to draw any such inference. We have before us two conveyances and two conveyances only. We know nothing whatever about the other houses on the estate, or the circumstances in which they were sold, whether or not they contained any, and what, restrictive covenants. It is an aspect of the matter which is very important in my judgment that you must be able to infer from the facts that each purchaser contemplated that he was entering into a liability not only to his vendor, but also to a number of other persons, which they could all directly enforce against him".

For the respondents one of the cases that has been called in aid is Sobey v. Sainsbury (1913) 2 Ch. 513 in which (at p.528) Sargeant J. said:

"In my opinion, the question of a building

scheme is one of intention, and an intention to create a building scheme is most clearly evinced by the particular document" (a conveyance of the property in one piece to a building society) "in question. The sale, though a sale in bulk, is to a society whose business it was to sell retail; the property is in fact cut up on the plan into plots which were conveniently sized for resale, and were, in fact, resold accordingly; and there are words at the end of the particular covenant in question which seem to me clearly to point to the mutual convenience of the intended sub-purchasers as the object of the arrangements that were being made".

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As to that case, Mr. Newsom has argued convincingly that, in the circumstances, whether there was a building scheme or not did not constitute the gravamen of the decision.

The question whether a building scheme has been created is one of fact depending on the intention of the parties and to be determined upon the same rules of evidence on any other question of intention (per Farwell L.J. in Elliston V. Reacher (1908) 2 Ch. 665, 673; per Lord Esher M.R. in Nottingham Patent Brick and Tile Co. v. Butler (1886) 16 Q.B.D. 778, 784; Kelly v Barrett (1924) 2 Ch. 379, 399). There is evidence of the laying out of a definite area of land for sale as building lots; and the exhibition to intending purchasers of a plan showing the lots is, on ample authority, cogent evidence of an intention to create a scheme. This exhibition was by reference in the printed form conveyances to the plan Exhibit C filed in the Surveyor-General's office where no one suggests that it was not freely open to inspection. There are three such conveyances to three separate purchasers and the evidence of Mr. Newton Higgs, which I think makes it clear enough that this printed form was the form of conveyance used by Brown for the purpose of selling off lots of land as laid out on the plan. I do not think that because this, or a similar form of indenture containing the covenants, was not used for the Ocean conveyance of 1935, in the circumstance, which I understand is not under dispute, that Brown was ceasing to be a vendor of lots and was transferring in bulk on foot of the plan the lots remaining to the Ocean and Lake View Company, disproves to any material degree the intention

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to have a scheme. This is not an instance, as seems to have occurred in many of the cases that have been under reference, where there is fault in lotting or in the clear definition of an area; nor is it one where the necessary inference is courted on circumstances such as those in White v. Bijou Mansions Ltd. (supra). Reading the printed form, I am of the view that the vendor did invite the purchasers to buy on the term that the land should be bound by one general or local law; and that the restrictions were not imposed solely for the benefit of the vendor's retained land - either to protect his retained land or to help him in disposing of the land comprised in an alleged scheme. I consider the restrictions were intended by the vendor and would be understood by the purchasers to be for their common advantage, as well as for the land retained to be sold off as purchasers appeared. The evidence may be of a somewhat meagre nature but it is not in my judgment so fragile as to be incapable of supporting the inference as to an intention to create a scheme. I would hold that there is sufficient evidence to sustain the finding of the lower Court that a building scheme for the Westward Villas Subdivision and its Additions was created.

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I turn to the question regarding unity of seisin. One cannot but agree that as a matter of theory it is difficult to say exactly what place restrictive covenants occupy in the legal scheme of things. The analogy with negative easements appears to be recognised as the most helpful. In Lawrence v. South County Freeholds Ltd. (1939) Ch. 656, 668, Simonds J., with reference to Renals v. Cowlshaw, (1878) 9 Ch. D.125, said: "A restrictive covenant creates a quasi-easement". Going down to the root of things, it would seem that equity has built up the rule in Tulk v. Moxhay on a close conformity with the common law rules governing easements. In general it is possible to say that the law of restrictive covenants is an equitable extension of the law of easements. There is some overlap, for certain rights of a negative kind, as rights to light, air, support or water, may either be acquired as easements or secured by restrictive covenants, though the latter are more often used for some purpose outside the scope of easements, such as preserving the amenity of a neighbourhood. A man cannot have an easement over his own land (Metropolitan Ry. v. Fowler (1892) 1 Q.B. 165, 171). The dominant and

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servient tenements must not be both owned and occupied by the same person. The rule is no more than the self-evident proposition that a man cannot have rights against himself. A. cannot sue A. in equity any more than at law. The following passage from Challis's Real Property, 3rd edn. p.88 is relevant:

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Extinguishment is properly used to denote the annihilation of a collateral thing in the subject out of which it issues, or in respect to which it is enjoyed; as of a rent charge, chief rent, common, profit a prendre, easement or seignory, in the land to which they respectively relate, or of an incumbrance, or an equitable estate, in the corresponding legal estate.

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It is necessary, in order that an extinguishment may take place, (1) that the right to the collateral thing and an estate in the land itself, shall come to the same lands; and (2) that the estate in the land be not less, in point of quantum and duration, than the estate in, or right to, the collateral thing. If the estate in the land should be less than the other estate or right, or if it should be defeasible, the rent or other collateral thing will only be suspended during the continuance of the estate in the land, and it will be revived upon the latter's determination or defeasance, (Co.Litt. 313. a, b.).

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There is no question here of a situation giving rise to mere suspension, for Chapmans Ltd. became the outright owners of all the lots. And as is said in Goddard on Easements, 7th edn. p.558 "Extinction on Unity of Seisin - as a general rule easements are extinguished by operation of law if the seisin of the dominant and servient tenements become united in one person". That, no doubt, is trite enough. Jessel, M.R., in London and South Western Ry. Co. v. Gomm (1882) 20 Ch. D., said (at p.583):

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"The doctrine (of Tulk v. Moxhay (sic) rightly considered, appears to me to be either an extension in equity of the doctrine in Spencer's Case (1583 5 Co. Rep. 16a) to another line of cases or else an extension in equity of the doctrine of negative easements .. this is an equitable doctrine establishing an exception to

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the rules of common law which did not treat such a covenant as running with the land, and it does not matter whether it proceeds on analogy to a covenant running with the land or on analogy to an easement. The purchaser took the estate subject to the equitable burden, with the qualification that if he acquired the legal estate for value without notice he was freed from the burden. That qualification, however, did not affect the nature of the burden; the notice was required merely to avoid the effect of the legal estate, and did not create the right, and if the purchaser took only with an equitable estate he took subject to the burden, whether he had notice or not".

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The view of Jessel, M.R., that a restrictive covenant is in the nature of an equitable easement has often been cited with judicial approval and accords with the doctrine that the covenant must be for the benefit of defined land; but it has been said that it does not seem to have greatly influenced the development of the law as to restrictive covenants.

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In Rogers v. Hosegood (1900) 2 Ch. 388, 394, Farwell, J., referring to the benefit of covenants running with the land, said:

"I do not think it necessary to call in aid the analogy of easements ... the accurate expression appears to be that the covenants are annexed to the land and pass with it much the same way as title deeds, which have quaintly been called the sinews of the land".

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The view is, I believe, generally accepted as correct that a restrictive covenant is a burden on the land affected analogous to a charge, and the benefit of the covenant is an equitable interest in land having the same nature and qualities as any other equitable interest in land, with certain characteristics peculiar to itself (and see per Farwell J. in In re Nisbet and Potts Contract (1905) 1 Ch. 391 at p.396).

Elphinstone on Covenants Affecting Land (1946, p.74) suggests that on the authorities he refers to, and I adopt these conclusions, a restrictive covenant affecting land has the four qualities:-

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(1) of a contract, which is relevant only in a

contest between the covenantor on the one hand and the covenantee or a person entitled to the benefit of the covenant by the common law or by statute on the other;

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(2) of an equitable charge on the land affected, its validity being dependent on the existence of certain facts which have been defined with precision and prevent a charge from being enforced to gratify the whim of the covenantee or for any purpose other than the protection of other land belonging to him;

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(3) of an equitable interest in the land affected by the covenant, the equitable interest being a right of property belonging to the person entitled to the benefit of the covenant; and

(4) of an equitable easement, in that the covenant cannot be enforced (except as a contract) unless it affects land (the servient tenement) and is intended for the benefit of other land (the dominant tenement).

Pursuing the comparison drawn with "the sinews of the land", it is here in this last quality that we are invited to find the Achilles heel or tendon which, when the dominant and servient tenements come together, makes for the undoing and death of the covenant.

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There is, it seems, no decided case serving as authority that the extinguishment pleaded through unity of seisin occurs also in the instance of a restrictive covenant. Mr. Bethell, for the respondents, has offered no argument in refutation of the submission made for the appellant on this point of the matter, except as to covenants arising under a scheme of development. All the lots with which those proceedings are concerned came to the hands of Chapmans Ltd. and it is contended that, as with easements, the covenants as annexed perish by virtue of the principles giving rise to extinguishment as a result of unity of seisin, with this difference that though an easement may come to life again, as, for example, of necessity, or being "continuous and apparent", a restrictive covenant cannot; and so Chapmans Ltd. by conveyances onwards after some years cannot effect a reviver by purporting to

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recognise therein the covenants as in being and continuing. The impression one gets from text-books, which cannot be referred to as supplying authority, is that there is a consensus of opinion that unity of seisin relating to restrictive covenants brings about a merger and extinguishment and I have discovered nothing contra. It has been said that Jolly on Restrictive Covenants Affecting Land, (1909), a copy of which is not available to me, adopts this view as to a merger. In one well-known modern work on Equity it is said that Tulk v. Moxhay covenants are analogous to trusts, but the analogy must not be pushed too far, and especially does this need for caution become apparent when we consider that they are subject to peculiar methods of annihilation; thus a change in the character of neighbourhood and laches may give cause then to expire from inanition. But it is also stated that - "Being in a sense the equitable equivalent of negative easements, they come to an end when the relation of dominancy and serviency comes to an end". That is precisely Mr. Newsom's case. The restrictive covenant must be destroyed, in the same way as an easement is destroyed, by unity of seisin; and as the covenant cannot be described either as necessary or as "continuous and apparent", the unity of seisin must in these cases destroy the covenant finally.

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This Court has received no assistance towards the finding of an answer that would displace the validity of that proposition, and I can find no answer. On the contrary, as at present advised it seems to me to state correctly the effect of the law and, moreover, to make good sense. I accept the argument and would hold that these covenants as annexed would not survive the merger of dominant and servient tenements through the unity of seisin in Chapmans Ltd., but as annexed covenants were extinguished; and there was no new covenant the benefit of which has devolved on the respondents. If this conclusion is correct it would mean that the appellant must succeed were it not for the fact that the covenants are also in being and supported by virtue of the building scheme as distinct from being annexed in the sense of arising under an instrument bringing about the annexation and being so framed that the benefit passes to a purchaser of the land by virtue merely of his ownership. No one has suggested that because an annexed covenant expires, the same form of covenant cannot remain in being

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where it arises under the regulations or local law governing a building scheme.

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10 But where a scheme of development exists and there are the covenants arising thereunder, it would seem extraordinary and indeed inequitable if the "local law" governing the scheme could be destroyed because a number of lots happened to come to the same hands. Again there is a dearth of direct authority on this aspect of the question regarding unity of seisin where there is a scheme of development. I do not think that Mr. Newsom really put it higher than this, that it appears doubtful whether the fact that a given owner has owned two plots within a scheme of development necessarily makes it impossible for subsequent owners of the two plots to enforce the stipulations against one another. In other words, as I understand it, it is doubtful that there would be an extinguishment in such circumstances. Though not of course put forward as authority, I would nevertheless adopt, for I cannot put it into more appropriate words, what has been said in Preston and Newsom on Restrictive Covenants, 4th edn. p.60, that is, that -

20 "The difference between the case of a scheme and the other cases appears to consist in the fact that the lotting is of the essence of the scheme and of the equities that it raises, and the scheme must stand or fall as a whole, whereas the other sorts of covenant stand or fall by themselves". I do not propose to examine in detail here the relevant portions of

30 Elliston v. Reacher (1908) 2 Ch. 374, affirmed ibid 665. Cozens-Hardy M.R. (at p.673) said:

40 "The very essence of a scheme of this kind is that it does not depend on the fact of there being separate purchasers of each lot, but it means that each lot, into whosesoever hands it comes, whether into the hands of the man who has bought half a dozen lots, or originally to a man who has bought one lot from the vendor, shall be subject in either case to the burden and have the benefit of the restrictive covenant."

If merger and extinguishment of covenants can be a consequence of lots coming to the one hands (there being a unity of seisin) where there is a scheme of development, would it not mean that the scheme must collapse? Chapmans Ltd. might with impunity (subject to nuisance or any municipal bye-laws) have erected a factory or a public garage on the adjoining lots that

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came to them, or raised swine or poultry, and the other purchasers living in their residences around, and looking to mutuality and reciprocity of obligation to protect the amenity of a residential neighbourhood, would be frustrated and helpless to interfere because the burden - as well as the benefit - that had been running with Chapmans' lots would have ceased to exist. On the assumption that I have got my picture right, I cannot accept it that this is the effect of equity. Since there was, in my estimation, a building scheme created, I would hold that the unity of seisin in Chapmans Ltd. did not give rise in such circumstances to the extinguishment of the covenant relied upon by the respondents.

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I come to the question whether the Ocean and Lake View Company were under the Ocean conveyance of 1935 bona fide purchasers for value without notice. If they were such then the burden ceased to attach to the appellant's lots 13, 14, 17 and 18. If this is the true position as to these four lots - that they are freed from the burden - and the respondents can only assert their right of benefit in regard to the remaining two lots 15 and 16, then it is submitted that the case is not one properly for relief by way of injunction but that damages would meet the justice of the matter.

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The plea under consideration is of course a single plea to be made by the defendant. The onus of proving no notice lies upon the appellant. The Court below came to the conclusion that the Ocean and Lake View Company had constructive notice within section 57 of the Conveyancing and Law of Property Act, Ch.115. The appellant says:- There is the conveyance - the Ocean conveyance - there is nothing about any covenants in it: there was no notice. There is a registry system operating in the Bahamas (see the Registration of Records Act, Ch. 193), and I do not think that there is any dispute about it that the established practice is to make searches against entries or documents recorded for the purpose of checking on title. We know, or at least it is accepted, that at any rate the Butler conveyance was lodged and registered. It is not improbable that other printed form conveyances of the lots sold by Brown were also on record. Much has been said in argument on a comparison between this registry system and those of Yorkshire and Middlesex; but I really think one need not go into all that for present

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purposes. There is no question of local registration affording notice to all the world, whatever may be the position under legislation in England. That it is at least reasonable to observe the practice and avail of the local system of registration, such as it is, for the purpose of inquiry and inspection cannot, I think, be gainsaid. For the appellant it is said that no more can be required as a matter of reasonable inquiry than to take steps to investigate its vendor's title, that is, Brown's title, in the direct line backwards for the necessary number of years. For the respondents it is submitted that in the particular circumstances the appellant ought reasonably to have looked further, and if this had been done it could not have failed to come to the knowledge of the Company or its solicitor or other agent, that there were covenants affecting, that is burdening, the land it was purchasing.

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It has been noticed that where the Ocean and Lake View Company in turn became a vendor, the covenants with which we are concerned were described in conveyances as continuing. Certainly at some stage this purchaser had actual knowledge, to include such a provision on resale. But of course this is not good enough, for it is the time of purchase that matters. Well, what was the position at that time? There was, if I am right, a building scheme - a careful lotting and laying out over quite a large estate. Brown, the creator of the scheme, was, as everything indicates, retiring from the business, if one may call it that, and the Ocean and Lake View Company was coming in to take over and sell off, as it did, in turn. It purchased all the lots remaining unsold, about three-quarters, I think, of the entire estate, and, as it seems evident, maintained them or held them as lots for resale. The Ocean conveyance referred to the lots as "pieces or parcels of land" and took full cognisance of the building scheme plan; and the plan disclosed what lots had been sold off by Brown and the lots unsold, the subject matter of the Ocean and Lake View Company's purchase. The Company was operating in the Bahamas and not in the moon. One would think that it must have been realised by the purchaser that the acquisition intended concerned land subject to a scheme of development. Be that as it may, there was the appearance of such development, of a community of interest, which would, in the ordinary nature of such things, be bound

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about by restrictive covenants for the benefit of the whole scheme and the individual purchasers of lots. The smell of restrictive covenants was in the air and all around. Surely in all reasonableness the Company can be said to be put upon inquiry as to the existence of collateral obligations and as to burdens attaching to the lots retained in Brown's hands which was it was purchasing. Search in the registry would have brought the covenants to the knowledge of the purchaser. I am not prepared to hold that the learned trial Judge was wrong in reaching a decision that the Ocean and Lake View Company was affected by notice. On this view the burden did in fact pass and remained attached to lots 13, 14, 17 and 18 in the appellants' hands.

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There remains the problem whether the injunction granted in the terms as prayed is too wide. There does not seem to have been any direct submission below in criticism of the form of relief as sought; but it is now said that the restriction should extend only to the building of a public garage and should not go so far as to restrain the - "carrying on or permitting to be carried on on the said lots the business of a gas station or public garage or any other trade or business in breach of the restrictive covenants imposed ...". It is argued that the covenant sued upon goes solely to the erection of a building and not to user. It is true that the covenant appears in a paragraph that speaks about buildings; but I think it is to be construed on its own words. It does not limit the restriction in terms to permitting building. If, for example, the owner of a lot, without any building, turned his house into a "manufacturing establishment", could such user not be restrained under the covenant? Or to infringe would a factory have to be built or alterations in the construction of the building made? The activities mentioned in the covenant are not to be permitted. I am not persuaded that the prohibition does not cover both building for the purposes specified and the carrying on of those activities.

20

30

40

I would dismiss the appeal with costs.

(Sgd.) PAGET I. BOURKE
J.A.

29 May 1969.

NO. 26APPLICATION FOR LEAVE TO APPEAL
TO HER MAJESTY IN COUNCILIn the
Court of
Appeal

No.26

Application
for leave to
appeal to
Her Majesty
in Council7th November
1969

10 TAKE NOTICE that this Honourable Court will be moved before a Lord Justice of the Court of Appeal on the 14th day of November A.D. 1969 at 11 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel for the above named Appellant that the Appellant may be at liberty to appeal from the Judgment herein of this Honourable Court given on the Third day of July A.D. 1969 to Her Majesty's Privy Council for an Order that the Judgment herein given by this Honourable Court may be set aside and Judgment may be entered for the Appellant.

Dated the 7th day of November, A.D. 1969.

WILLIAM McP. CHRISTIE & CO.,
Attorneys for the Appellant.

NO. 27ORDER GRANTING SPECIAL LEAVE TO
APPEAL TO HER MAJESTY IN COUNCILIn the
Privy Council

No.27

20 AT THE COURT AT BUCKINGHAM PALACE

The 4th day of February 1970

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President
Lord Brown
Mr. Secretary Thomas
Mr. Silkin

Mr. Mellish
Mr. Dell
Sir Arthur Irvine
Sir Leslie O'Brien

Order granting
special leave
to appeal to
Her Majesty
in Council4th February
1970

30 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 22nd day of January 1970 in the words following viz.:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this

In the
Privy Council

—
No.27

Order granting
special leave
to appeal to
Her Majesty
in Council

4th February
1970

Committee a humble Petition of Texaco Antilles Limited in the matter of an Appeal from the Court of Appeal for the Bahama Islands between the Petitioner and (1) Dorothy Kernochan and (2) Clifford Louis Kernochan Respondents setting forth that the Petitioner desires to obtain special leave to appeal from the Judgment of the Court of Appeal for the Bahama Islands dated the 3rd July 1969 affirming the Judgment of the Supreme Court of the Bahama Islands dated the 20th May 1968: And humbly praying Your Majesty in Council to order that the Petitioner should have special leave to appeal from the said Judgment of the Court of Appeal for the Bahama Islands dated the 3rd July 1969 or for further or other relief:

10

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute its Appeal against the Judgment of the Court of Appeal for the Bahama Islands dated the 3rd July 1969 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs:

20

"AND Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

30

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Bahama Islands for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

40

W.G. AGNEW

EXHIBITSA - Assessment signed by D. Lester Brown

BAHAMA ISLANDS
New Providence.

On 25th January 1968, the undersigned was requested to inspect and value a property owned by Dorothy and Clifford Kernochan situated in the Subdivision known as Westward Villas in the Western District of the Island of New Providence.

10 I have inspected the subject property being lot No. 39 and half of lot No. 40 in block No. 3 of the said Subdivision having a total frontage on the main road of 90 feet with a depth of about 130 feet, on which there is a one-storey dwelling house of masonry construction.

My valuation as of 25th January 1968 is Fifty thousand dollars (\$50,000.00).

20 It is my considered opinion that the presence of a gasoline filling station immediately to the North of this property would reduce the value by Twenty thousand dollars (\$20,000.00) and I very much doubt if we could sell the property for more than Thirty thousand dollars (\$30,000.00) if a gasoline station is erected adjoining this property.

(Sgd) D. Lester Brown

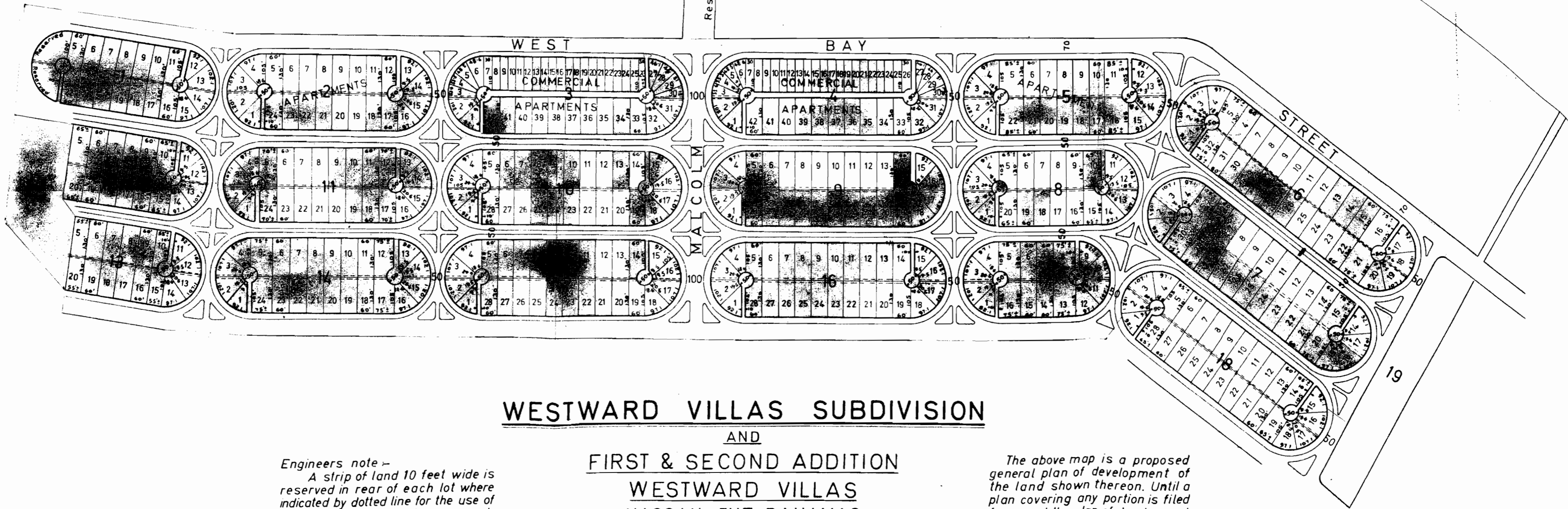
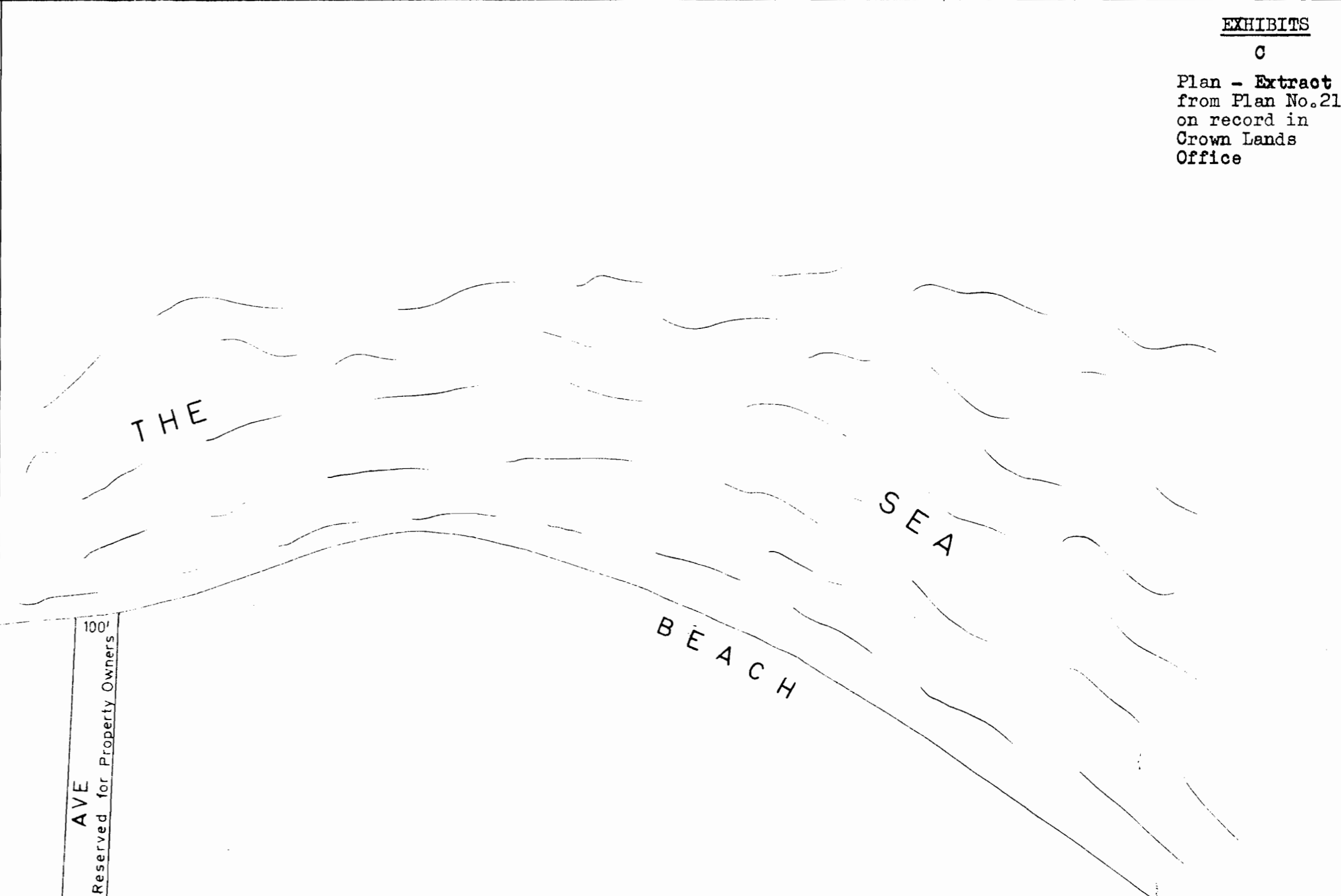
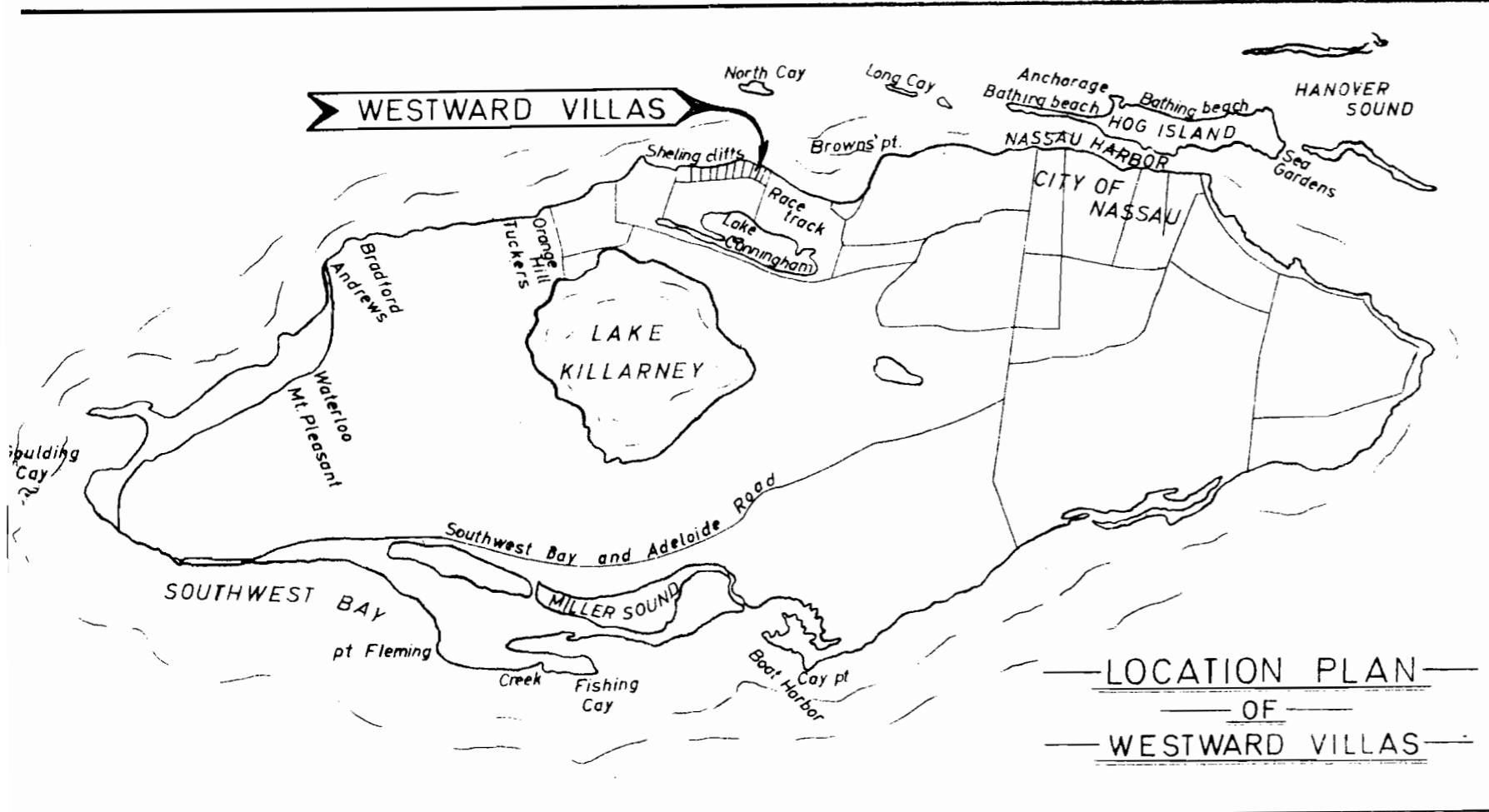
GOVERNMENT ASSESSOR.

EXHIBITS

A

Assessment
signed by
D. Lester
Brown

25th January
1968.



WESTWARD VILLAS SUBDIVISION AND

FIRST & SECOND ADDITION WESTWARD VILLAS NASSAU, THE BAHAMAS W. E. BROWN LAND CO. LTD.

Engineers note -
A strip of land 10 feet wide is reserved in rear of each lot where indicated by dotted line for the use of wire lines, pipe lines, poles, sewers etc.
The circles at each end of blocks are 50 feet in diameter and all alleys leading from these circles are 10 feet wide

The above map is a proposed general plan of development of the land shown thereon. Until a plan covering any portion is filed for record the plan of development of said portion may be changed subject to the provisions of any contracts in writing expressly made relating thereto

BLOCKS 1 TO 6 INCLUSIVE ARE WESTWARD VILLAS SUBDIVISION
BLOCKS 7 TO 12 INCLUSIVE ARE FIRST ADDITION WESTWARD VILLAS
BLOCKS 13 TO 19 INCLUSIVE ARE SECOND ADDITION WESTWARD VILLAS

Note: The property shown upon this plot is restricted to residence except where otherwise indicated.
W. E. BROWN LAND CO. LTD.
by: F. W. Hazzard, President
Andrew T. Healy, Secretary

PLAINTIFFS' TITLE (omitting renunciations of dower)

EXHIBITS

LOTS 39 & 40

<u>Date</u>	<u>Exhibit in action</u>	<u>Nature and Parties</u>
13th October 1939	Exhibit E8	<u>Conveyance</u> T.S. Hilton to Chapmans Limited
19th March 1954	<u>[unidentified]</u> Exhibit E9	<u>Conveyance</u> Chapmans Limited to Western Estates Limited

N.B. There is no documentary evidence that this land was derived for the Brown Company otherwise than through Ocean and no clear evidence that the alleged Brown-Hilton conveyance was after 5.5.27.

Plaintiffs' Title handed in by Agreement at Appeal. Undated

LOT 39

<u>Date</u>	<u>Exhibit in action</u>	<u>Nature and Parties</u>
13th January 1958	E.3	<u>Conveyance</u> Western Estates Limited to C.B. Livingston

LOT 40

<u>Date</u>	<u>Exhibit in action</u>	<u>Nature and Parties</u>
13th January 1958	E.6	<u>Conveyance</u> Western Estates Limited to B.S.Pritchard
10th February 1958	E.5	<u>EASTERN MOLETY OF LOT 40</u> <u>Conveyance</u> B.S.Pritchard to C.B.Livingston

LOT 39 AND EASTERN MOIETY OF LOT 40

<u>Date</u>	<u>Exhibit in action</u>	<u>Nature and Parties</u>
7th March 1958	E.2	Mortgage C.B.Livingston to Kelly's Lumber Yard Limited.
9th April 1962	D	Conveyance subject to mortgage of 7th March 1958 C.B.Livingston to C.K.Kernochan and D.E. Kernochan
6th March 1964	E.2	<u>Receipt for mortgage money</u>

EXHIBITS

Plaintiffs'
Title handed
in by
Agreement
at Appeal
Undated
(continued)

EXHIBITS

~~DEPENDANTS'~~
~~Plaintiffs'~~

Title handed
in by
Agreement
at Appeal
Undated
(continued)

Lots 15 & 16

LOTS 14, 17 & 18

Lot 13

<u>Date</u>	<u>Exhibit</u>	<u>Nature & Parties</u>	<u>Date</u>	<u>Exhibit in action</u>	<u>Nature & Parties</u>
12th January 1942	Abstract p.2	<u>Conveyance</u> Ocean & Lake View Co.Ltd. to Chapmans Limited	12th November 1951	8a	<u>Conveyance</u> Chapmans Limited to Bahamian Industries Limited
			30th January 1960	8b	<u>Mortgage</u> Bahamian Industries Limited to Kelly's Lumber Yard Limited
			14th January 1961	8b	<u>Receipt for mortgage money</u>
			<u>Lots 13, 14, 15, 16</u>		
26th January 1961				8d	<u>Conveyance</u> Bahamian Industries Limited to Cameron Investments Limited

18

LOTS 13, 14, 15 and 16

Date Exhibit in action
26th January 8c
1961

Nature & Parties

Grant of right of way
Western Roadways Limited to
Cameron Investments Limited

LOTS 17 & 18

Date Exhibit in action

1st February 8e
1961

23rd October 8e
1961

21st November 8f
1961

29th November 8g
1961

23rd December 8h
1961

Conveyance
Cameron Investments Limited
to
American Investment Co. Limited

Nature and Parties

Mortgage
Bahamian Industries Ltd.
to
Kelly's Lumber Yard Ltd.

Receipt for mortgage money

Conveyance
Bahamian Industries Ltd.
to
American Investment Co.
Limited

Grant of right of way
Western Roadways Limited
to
American Investments Co.
Limited

100

EXHIBITS
DEFENDANTS'
~~Plaintiffs'~~
Title handed
in by
Agreement
at Appeal
Undated
(continued)

EXHIBITS
DEPENDANTS,
Plaintiffs,
Title handed
in by
Agreement
at Appeal
Undated
(continued)

LOTS 13, 14, 15, 16, 17, 18

<u>Date</u>	<u>Exhibit in action</u>	<u>Nature & Parties</u>
14th July 1966	8m	<u>Conveyance</u> American Investment Co. Limited to Anjask Limited
17th January 1968	8k	<u>Conveyance</u> Anjask Limited to Texaco Antilles Limited

THE DEFENDANTS' TITLE

Lots 13, 14, 17, 18

Lots 15 & 16

<u>Date</u>	<u>Exhibit in action</u>	<u>Nature & Parties</u>	<u>Date</u>	<u>Exhibit in Nature & Parties</u>
3rd April 1935	K	Conveyance W.E. Brown Land Co. Ltd. to Ocean & Lake View Co. Ltd.	5th May 1927	Sm. Exhibit A thereto

Conveyance
W.E. Brown Land Co.
Limited to
J. Baird Albury

Lots 14, 17 & 18

<u>Date</u>	<u>Exhibit</u>	<u>Nature & Parties</u>
27th January 1939	Abstract p.2	Conveyance Ocean & Lake View Co. Ltd. to Bahamas Limited
3rd May 1939	Abstract p.12	Conveyance Bahamas Limited to Chapmans Limited

LOT 13

Lots 15 & 16

<u>Date</u>	<u>Exhibit</u>	<u>Nature & Parties</u>
24th October 1939	8j	Conveyance J.B. Albury to Chapmans Limited

EXHIBITS
DEFENDANTS'
~~Plaintiffs'~~
Title handed
in by
Agreement
at Appeal
Undated
~~(continued)~~

EXHIBITS

D - Conveyance Livingston to Kernochan

D

NS VOL 503 Page 594

Conveyance
Livingston
to
Kernochan
9th April
1962.

BAHAMA ISLANDS
New Providence.

THIS INDENTURE is made the Ninth day of April in the year of Our Lord One thousand nine hundred and sixty two BETWEEN Carl Bronson Livingston of the Western District of the Island of New Providence Public Relations Executive (hereinafter called the Vendor) of the one part AND Clifford Louis Kernochan and his wife Dorothy Elberta Kernochan both of the Western District of the said Island of New Providence (hereinafter collectively called the Purchasers) of the other part

10

WHEREAS:

(A) At the date of the Indenture next hereinafter recited the Vendor was seised in unincumbered fee simple in possession of the hereditaments hereby assured

(B) The said hereditaments are subject to certain restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company, Limited which said restrictions and conditions still continue

20

(C) The Vendor is the absolute owner of the household furniture goods chattels and effects intended to be hereby assigned and transferred

(D) By an Indenture dated the Seventh day of March, A.D. 1958 and made between the Vendor of the one part and Kelly's Lumber Yard Limited of the other part and recorded in the Registry of Records in the City of Nassau in the said Island of New Providence in Volume 106 at pages 590 to 595 the said hereditaments were granted and conveyed unto and to the use of the said Kelly's Lumber Yard Limited and their assigns in fee simple by way of mortgage for securing the principal sum of Seven thousand and Seven hundred pounds and interest in accordance with the covenants therein contained

30

40

(E) The sum of Five thousand two hundred and twenty six pounds being the balance of the principal sum of Seven thousand and seven hundred pounds remains due and owing on the security of

the said Indenture together with interest thereon

EXHIBITS

(F) The Vendor has agreed to sell to the Purchasers the fee simple of the said hereditaments subject to the said restrictions and conditions and subject also to the said recited Indenture of Mortgage but free from all other incumbrances and the said household furniture goods chattels and effects at the price of Seven thousand and four hundred pounds

D

Conveyance
Livingston
to
Kernochan

9th April
1962

(continued)

10 NOW THIS INDENTURE WITNESSETH as follows :-

1. In pursuance of the said agreement and in consideration of the said sum of Seven thousand and four hundred pounds paid to the Vendor by the Purchasers out of moneys belonging to the Purchasers on a joint account (the receipt whereof the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER hereby grants and conveys unto the Purchasers ALL that piece parcel or lot of land situate in the Western District of the said
20 Island of New Providence being Lot Number Thirty-nine (No.39) of Block Number Three (No.3) in a plan of Westward Villas Subdivision and First and Second Addition Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 and now filed in the Office of the Crown Lands Officer of the Colony as No.21C which said piece parcel or lot of land has such position boundaries shape marks and dimensions as are shown on the said diagram or plan AND ALSO ALL THAT piece or parcel
30 of land situate as aforesaid being the Eastern moiety of Lot Number Forty (No.40) of Block Number Three (No.3) in the said plan of Westward Villas Subdivision and First and Second Addition Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 and now filed in the Office of the Crown Lands Officer of the Colony as No. 21C which said piece or parcel of land has such position boundaries shape marks and dimensions as are shown on the said diagram or plan TOGETHER WITH the
40 benefit of the right of way so far as the Vendor can grant or assign the same over and upon the three several roads leading from West Bay Street to the Sea as shown on the plan of "Cable Beach" filed in the Office of the Crown Lands Officer of the Colony as Number 21C TO HOLD the same unto and to the use of the Purchasers in fee simple as joint tenants subject to the said restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company Limited which said

EXHIBITS

D

Conveyance
Livingston
to
Kernochen

9th April
1962

(continued)

restrictions and conditions still continue and subject also to the said recited Indenture of Mortgage and the balance of the principal sum and other moneys thereby secured and all interest now due and henceforth to become payable in respect thereof

2. In pursuance of the said agreement and for the consideration aforesaid the Vendor AS BENEFICIAL OWNER hereby assigns and transfers unto the Purchasers ALL the household furniture kitchen utensils garden implements goods chattels and effects now being in upon about or belonging to the said hereditaments hereinbefore described and intended to be hereby granted and conveyed or in upon about or belonging to the buildings thereon TO HOLD the same unto the Purchasers absolutely 10

3. The Purchasers hereby jointly and severally covenant with the Vendor that the Purchasers their heirs executors administrators or assigns will pay the balance of all principal moneys and interest secured by and now due or henceforth to become due under the said recited Indenture of Mortgage and will at all times hereafter keep indemnified the Vendor his estate and effects from all actions claims and demands on account thereof 20

4. The Purchasers with the object and intention of affording to the Vendor a full and sufficient indemnity in respect of the restrictions and conditions imposed upon the said hereditaments and premises hereby granted and conveyed but not further or otherwise hereby jointly and severally covenant with the Vendor that the Purchasers their heirs executors administrators and assigns will henceforth duly observe and perform such restrictions and conditions and at all times indemnify the Vendor his executors administrators and assigns against all actions claims and demands whatsoever in respect of the said restrictions and conditions or any of them so far as the same affect the said hereditaments hereby assured 30 40

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year first

hereinbefore written

(Sgd) Carl B. Livingston

Signed Sealed and Delivered by the said Carl Bronson Livingston in the presence of :-

(Sgd) Alice M. Farrington

Clifford Kernochan (Sgd)

Dorothy Kernochan (Sgd)

Signed Sealed and Delivered by the said Clifford Louis Kernochan and Dorothy Elberta Kernochan in the presence of :-

(Sgd) Alice M. Farrington

EXHIBITS

D

Conveyance
Livingston
to

Kernochan

9th April
1962

(continued)

10

F(1) - Conveyance Hilton to Chapmans Limited

F(1)

BAHAMA ISLANDS
New Providence.

Conveyance
Hilton to
Chapmans
Limited

13th October
1939

20

THIS INDENTURE made the Thirteenth of October in the year of Our Lord One thousand nine hundred and thirty nine BETWEEN Thomas Sampson Hilton of the City of Nassau in the Island of New Providence aforesaid Merchant (hereinafter called the Vendor) of the one part AND Chapmans Limited a company incorporated under the laws of the Bahama Islands and carrying on business within the Colony (hereinafter called the Purchasers) of the other part WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments intended to be herein granted and conveyed and he has agreed to sell the same to the Purchasers for the sum of Two hundred (200) pounds AND WHEREAS the said hereditaments are subject to certain restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company Limited which the said restrictions and conditions still continue NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of Two hundred (200) pounds to the Vendor paid by the Purchaser on or before the execution of these presents (the receipt whereof is hereby acknowledged) the Vendor AS BENEFICIAL

30

EXHIBITS

F(1)

Conveyance
Hilton to
Chapmans
Limited

13th October
1939

(continued)

OWNER hereby grants and conveys unto the Purchasers all the hereditaments and premises more particularly described and set out in the Schedule hereto together with the appurtenances thereunto belonging TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple subject to the said restrictions and conditions imposed on the hereditaments by the W.E. Brown Land Company Limited which said restrictions and conditions still continue

10

THE SCHEDULE HEREINBEFORE REFERRED TO

All that piece parcel or lot of land situate in the Western District of the said Island of New Providence being Lot Number Eighteen (No.18) of Block Six (6) in a plan of Westward Villas Subdivision and First and Second Addition Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 and now filed in the Office of the Surveyor General of the Colony as Number 21C which said piece parcel or lot of land is bounded 20
on the Northeast by Rugby Avenue on the South by Lot Number Nineteen (No.19) of the said Block Six (6) on the South-west by a reservation for a right of way and on the Northwest by Lot Number Seventeen (No. 17) of the said Block Six (6) AND ALSO all those pieces parcels or lots of land situate in the Western District of the said Island of New Providence being Lots Numbers Thirty nine (No.39) and Forty (No.40) of Block Three (3) in the said 30
plan of Westward Villas Subdivision and First and Second Addition Westward Villas which said pieces parcels or lots of land are bounded on the North by a reservation for an Alley on the East by Lot Number Thirty eight (No.38) of the said Block Three (3) on the South by Hampshire Street and on the West by Lot Number Forty one (No.41) of the said Block Three (3)

IN WITNESS WHEREOF the Vendor hath
hereunto set his hand and seal

(Sgd) Thos. Hilton

40

Signed Sealed and Delivered by the said Thomas Sampson Hilton on the Thirteenth day of October in the year of Our Lord One thousand nine hundred and thirty-nine in the presence of :-

(Sgd) Sarah Malone

IN WITNESS WHEREOF Chapmans Limited
have caused their Common Seal to be
hereunto affixed

(Sgd) Doris L. Barlow
President.

10 The Common Seal of Chapmans Limited was affixed
hereto by Doris Louise Barlow the President of
the said Company and the said Doris Louise Barlow
affixed her signature hereto on the Twenty first
day of October in the year of Our Lord One
thousand nine hundred and thirty nine in the
presence of :-

(Sgd) Alice M. Farrington
Secretary

EXHIBITS

F(1)

Conveyance
Hilton to
Chapmans
Limited

13th October
1939

(continued)

F(iii) - Conveyance Chapmans Limited to Western
Estates Limited

BAHAMA ISLANDS
New Providence

F(iii)

Conveyance
Chapmans
Limited to
Western
Estates
Limited

19th March
1954

20 THIS INDENTURE made the nineteenth day of
March in the year of Our Lord One thousand nine
hundred and fifty four BETWEEN CHAPMANS LIMITED a
company incorporated under the laws of the Bahama
Islands and carrying on business within the Colony
(hereinafter called "the Vendors") of the one part
AND WESTERN ESTATES LIMITED a company also
incorporated under the laws of the Bahama Islands
and carrying on business within the Colony
(hereinafter called "the Purchasers") of the other
part

30 WHEREAS the Vendors are seised in fee simple in
possession free from incumbrances of the heredita-
ments intended to be hereby granted and conveyed
and they have agreed to sell the same to the
Purchasers TOGETHER WITH the benefit of the right-
of-way over the three roads leading from West Bay
Street to the Sea as is hereinafter described for
the sum of Ten thousand (10,000) pounds and whereas the
said hereditaments are on the said hereditaments by
40 the W.E. Brown Land Company Limited which said
restrictions and conditions still continue

EXHIBITS

F(iii)

Conveyance
Chapmans
Limited to
Western
Estates
Limited

19th March
1954

(continued)

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of Ten thousand (10,000) pounds to the Vendors paid by the Purchasers on or before the execution of these presents (the receipt whereof is hereby acknowledged) the Vendors as BENEFICIAL OWNERS hereby grant and convey unto the Purchasers ALL THOSE pieces or parcels of land situate in the Western District of the Island of New Providence being portions of the Subdivision known as Westward 10 Villas Subdivision and First and Second Addition Westward Villas the said pieces or parcels of land having such position boundaries shape and dimensions as are shown on the diagram or plan hereto attached and being delineated on those parts which are coloured Pink on the said diagram or plan TOGETHER WITH the benefit of the right-of-way so far as the Vendors can grant or assign the same over and upon the three several roads leading from West Bay Street to the Sea and shown on the plan of "Cable Beach" filed in the Office of the Crown Lands Officer of the Colony at No.21C TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple SUBJECT to the said restrictions and conditions and the Purchasers with the object and intention of affording to the Vendors a full and sufficient indemnity in respect of the restrictions and conditions imposed on the said hereditaments and premises hereby granted and conveyed but not further or otherwise hereby covenant with the Vendors that the Purchasers and their assigns will henceforth duly observe and perform such restrictions and conditions and at all times indemnify the Vendors and their assigns against all actions claims and demands whatsoever in respect of the said restrictions or conditions or any of them so far as the same affect the said hereditaments hereby assured.

20

30

IN WITNESS WHEREOF Chapmans Limited have caused their Common Seal to be hereunto affixed

40

President

The Common Seal of Chapmans Limited was affixed hereto by Eunice Lady Oakes, the President of the said Company and the said Eunice Lady Oakes affixed her signature hereto on the 19th day of March in the year of Our Lord One thousand nine hundred and fifty four

in the presence of :-

H. NEWELL KELLY
Secretary

IN WITNESS WHEREOF Western Estates
Limited have caused their Common Seal to be
hercunto affixed.

CHAS T. KELLY
President

EXHIBITS
F(iii)
Conveyance
Chapmans
Limited to
Western
Estates
Limited
19th March
1954
(continued)

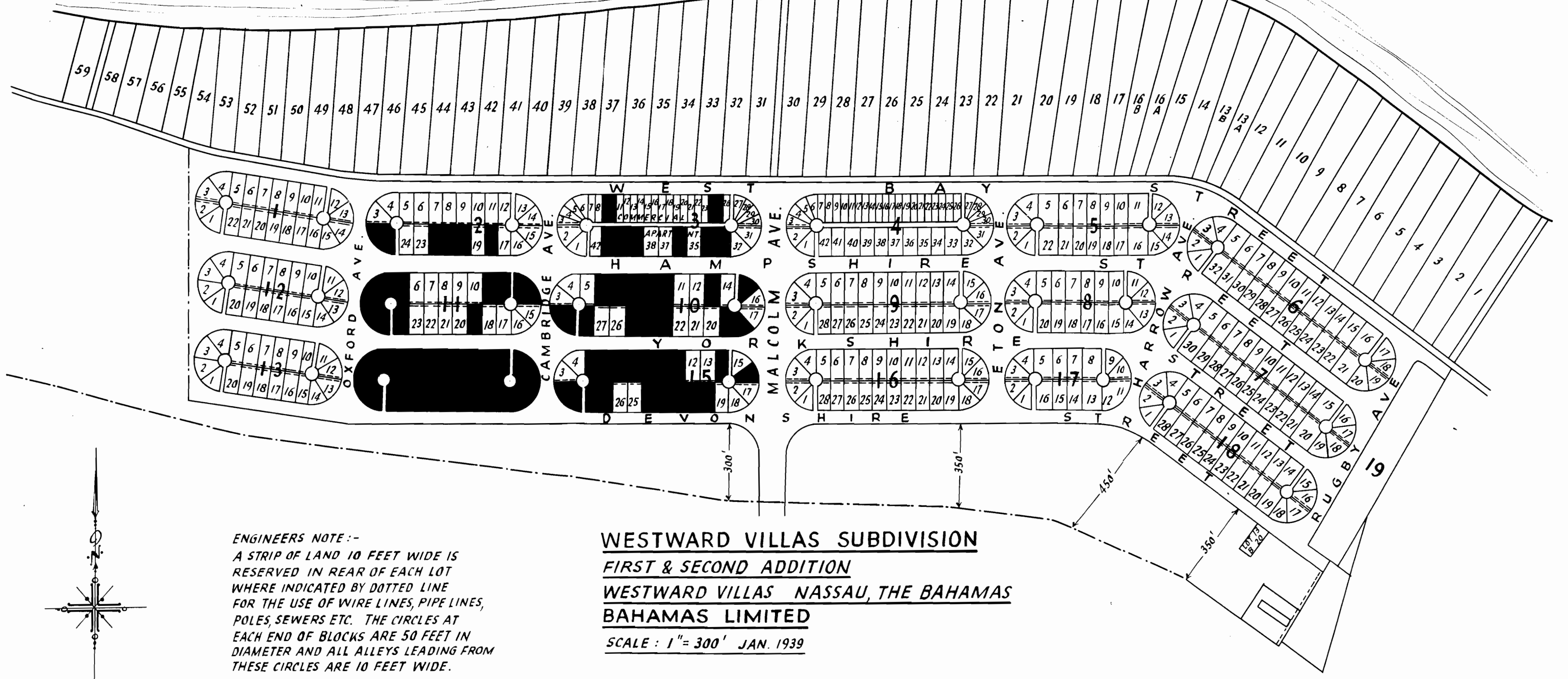
10. The Common Seal of Western Estates Limited
was affixed hereto by Charles Trevor Kelly, the
President of the said Company and the said
Charles Trevor Kelly affixed his signature hereto
on the 7th day of April in the year of Our Lord
One thousand nine hundred and fifty-four in the
presence of :-

F. H. CHRISTIE
Secretary

EXHIBITS
 F(iii)
 CONVEYANCE
 CHAPMANS LIMITED TO
 WESTERN ESTATES LIMITED
 19TH MARCH 1954 (CONTINUED)

III.

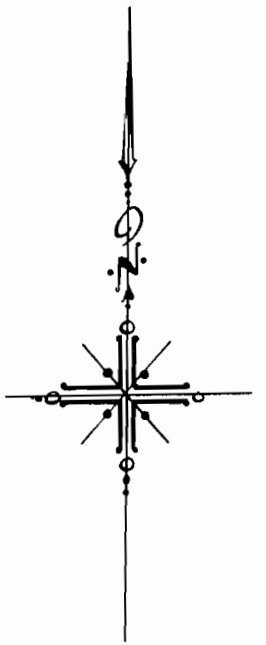
T H E S E A



ENGINEERS NOTE :-
 A STRIP OF LAND 10 FEET WIDE IS
 RESERVED IN REAR OF EACH LOT
 WHERE INDICATED BY DOTTED LINE
 FOR THE USE OF WIRE LINES, PIPE LINES,
 POLES, SEWERS ETC. THE CIRCLES AT
 EACH END OF BLOCKS ARE 50 FEET IN
 DIAMETER AND ALL ALLEYS LEADING FROM
 THESE CIRCLES ARE 10 FEET WIDE.

WESTWARD VILLAS SUBDIVISION
FIRST & SECOND ADDITION
WESTWARD VILLAS NASSAU, THE BAHAMAS
BAHAMAS LIMITED
 SCALE : 1" = 300' JAN. 1939

BLOCKS 1 TO 6 INCLUSIVE ARE WESTWARD VILLAS SUBDIVISION
 BLOCKS 7 TO 12 INCLUSIVE ARE FIRST ADDITION WESTWARD VILLAS
 BLOCKS 13 TO 18 INCLUSIVE ARE SECOND ADDITION WESTWARD VILLAS



F(iv) - Conveyance Western Estates Limited
to B.S. Pritchard

BAHAMA ISLANDS
 New Providence.

EXHIBITS

F(iv)

Conveyance
 Western
 Estates
 Limited to
 B.S.Pritchard

13th January
 1958

THIS INDENTURE made the Thirteenth day of
 January in the year of Our Lord One thousand nine
 hundred and fifty eight BETWEEN Western Estates
 Limited a company incorporated under the laws of
 the Bahama Islands and carrying on business within
 10 the Colony (hereinafter called the Vendors) of the
 one part AND Bertram Savage Pritchard of the
 Eastern District of the Island of New Providence
 Bank Manager (hereinafter called the Purchaser) of
 the other part WHEREAS the Vendors are seised in
 fee simple in possession free from incumbrances of
 the hereditaments intended to be hereby granted
 and conveyed and they have agreed to sell the same
 to the Purchaser for the sum of One thousand and
 20 three hundred pounds AND WHEREAS the said here-
 ditaments are subject to certain restrictions and
 conditions imposed on the said hereditaments by the
 W.E. Brown Land Company, Limited which said
 restrictions and conditions still continue NOW
 THIS INDENTURE WITNESSETH that in pursuance of
 the said agreement and in consideration of the
 said sum of One thousand and three hundred pounds
 to the Vendors paid by the Purchaser on or before
 the execution of these presents (the receipt
 whereof is hereby acknowledged) the Vendors AS
 30 BENEFICIAL OWNERS hereby grant and convey unto
 the Purchaser ALL those pieces parcels or lots
 of land situate in the Western District of the
 said Island of New Providence being Lots Numbers
 Forty (No.40) and Forty-one (No.41) of Block
 Number Three (No.3) in a plan of Westward Villas
 Subdivision and First and Second Addition Westward
 Villas prepared by W.E. Brown Civil Engineer dated
 February 1925 and now filed in the Office of the
 Crown Lands Officer of the Colony as No.21C which
 40 said pieces parcels or lots of land have such
 positions boundaries shapes marks and dimensions
 as are shown on the said diagram or plan TOGETHER
 with the benefit of the right of way so far as
 the Vendors can grant or assign the same over and
 upon the three several roads leading from West

EXHIBITS

F(iv)

Conveyance
Western
Estates
Limited to
B.S.Pritchard

13th January
1958

(continued)

Bay Street to the Sea as shown on the plan of "Cable Beach" filed in the Office of the Crown Lands Officer of the Colony as Number 21C TO HOLD the same unto and to the use of the Purchaser in fee simple subject to the said restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company, Limited which said restrictions and conditions still continue AND the Purchaser with the object and intention of affording to the Vendors a full and sufficient indemnity in respect of the restrictions and conditions imposed upon the said hereditaments and premises hereby granted and conveyed but not further or otherwise hereby covenants with the Vendors that the Purchaser his heirs executors administrators and assigns will henceforth duly observe and perform such restrictions and conditions and at all times indemnify the Vendors and their assigns against all actions claims and demands whatsoever in respect of the said restrictions and conditions or any of them so far as the same affect the said hereditaments hereby assured AND the Vendors hereby acknowledge the right of the Purchaser at the expense of the Purchaser to production of all documents of title in their possession relating to the said pieces parcels or lots of land and to delivery of copies thereof and hereby undertake for the safe custody thereof

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IN WITNESS WHEREOF Western Estates
Limited have caused their Common Seal
to be hereunto affixed

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(Sgd) - Kelly

President.

The Common Seal of Western Estates Limited was affixed hereto by Charles Trevor Kelly the President of the said Company and the said Charles Trevor Kelly affixed his signature hereto on the 13th day of January in the year of Our Lord One thousand nine hundred and fifty eight in the presence of:-

40

(Sgd) F.H. Christie

Secretary

IN WITNESS WHEREOF the Purchaser hath
hereunto set his hand and seal

(Sgd) B.S. Pritchard

Signed Sealed and Delivered by the said Bertram
Savage Pritchard on the day of in
the year of Our Lord One thousand nine hundred and
fifty eight in the presence of:-

(Sgd) Yvonne Knowles

EXHIBITS

F(iv)

Conveyance
Western
Estates
Limited to
B.S.Pritchard
13th January
1958

(continued)

EXHIBITS

F(v) - Conveyance Western Estates Limited
to C.B. Livingston

F(v)
Conveyance
Western
Estates
Limited
to
C.B.
Livingston
13th January
1958.

BAHAMA ISLANDS
New Providence.

THIS INDENTURE made the Thirteenth day of January in the year of Our Lord One thousand nine hundred and fifty eight BETWEEN Western Estates Limited a company incorporated under the Laws of the Bahama Islands and carrying on business within the Colony (hereinafter called the Vendors) of the one part AND Carl Bronson Livingston of the Eastern District of the Island of New Providence one of the Bahama Islands Public Relations Executive (hereinafter called the Purchaser) of the other part WHEREAS the Vendors are seised in fee simple in possession free from incumbrances of the hereditaments intended to be hereby granted and conveyed and they have agreed to sell the same to the Purchaser for the sum of Six hundred and fifty pounds AND WHEREAS the said hereditaments are subject to certain restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company Limited which said restrictions and conditions still continue NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of six hundred and fifty pounds to the Vendors paid by the Purchaser on or before the execution of these presents (the receipt whereof is hereby acknowledged) the Vendors AS BENEFICIAL OWNERS hereby grant and convey unto the Purchaser ALL THAT piece parcel or lot of land situate in the Western District of the said Island of New Providence being Lot Number Thirty nine (No.39) of Block Number Three (No.3) in a plan of Westward Villas Subdivision and First and Second Addition Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 and now filed in the Office of the Crown Lands Officer of the Colony as No. 21C which said piece parcel or lot of land has such position boundaries shape marks and dimensions as are shown on the said diagram or plan TOGETHER WITH the benefit of the right of way so far as the Vendors can grant or assign the same over and upon the three several roads leading from West Bay Street to the Sea as shown on the plan of "Cable Beach" filed in the Office of the Crown Lands Officer of the Colony as Number 21C TO HOLD the same unto and to the use of the

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Purchaser in fee simple subject to the said restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company, Limited which said restrictions and conditions still continue AND the Purchaser with the object and intention of affording to the Vendors a full and sufficient indemnity in respect of the restrictions and conditions imposed upon the said hereditaments and premises hereby granted and conveyed but not further or otherwise hereby covenants with the Vendors that the Purchaser his heirs executors administrators and assigns will henceforth duly observe and perform such restrictions and conditions and at all times indemnify the Vendors and their assigns against all actions claims and demands whatsoever in respect of the said restrictions and conditions or any of them so far as the same affect the said hereditaments hereby assured AND the Vendors hereby acknowledge the right of the Purchaser at the expense of the Purchaser to production of all documents of title in their possession relating to the said piece parcel or lot of land and to delivery of copies thereof and hereby undertake for the safe custody thereof

IN WITNESS WHEREOF Western Estates Limited have caused their Common Seal to be hereunto affixed

(Sgd) Chas T. Kelly

President.

The Common Seal of Western Estates Limited was affixed hereto by Charles Trevor Kelly the President of the said Company and the said Charles Trevor Kelly affixed his signature hereto on the 13th day of January in the year of Our Lord One thousand nine hundred and fifty eight in the presence of :-

(Sgd) F.H. Christie

Secretary

IN WITNESS WHEREOF the Purchaser hath hereunto set his hand and seal

(Sgd) Carl B. Livingston

Signed Sealed and Delivered by the said Carl Bronson Livingston on the Tenth day of February in the year of Our Lord One thousand nine hundred and fifty-eight in the presence of:- (Sgd) Yvonne Knowles

EXHIBITS

F(v)

Conveyance
Western
Estates
Limited
to
C.B.
Livingston
13th January
1958

(continued)

EXHIBITSF(vi) - Conveyance B.S. Pritchard to
C.B. Livingston

F(vi)

Conveyance
B.S.Pritchard
to C.B.
Livingston
10th February
1958

BAHAMA ISLANDS
New Providence.

THIS INDENTURE made the Tenth day of February in the year of Our Lord One thousand nine hundred and fifty eight BETWEEN Bertram Savage Pritchard of the Eastern District of the Island of New Providence Bank Manager (hereinafter called the Vendor) of the one part AND Carl Bronson Livingston of the Eastern District of the said Island of New Providence Public Relations Executive (hereinafter called the Purchaser) of the other part WHEREAS the Vendor is seised in fee simple in possession free from incumbrances of the hereditaments intended to be hereby granted and conveyed and he has agreed to sell the same to the Purchaser for the sum of Three hundred and twenty five pounds AND WHEREAS the said hereditaments are subject to certain restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company, Limited which said restrictions and conditions still continue

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the said sum of Three hundred and twenty five pounds to the Vendor paid by the Purchaser on or before the execution of these presents (the receipt whereof is hereby acknowledged) the Vendor AS BENEFICIAL OWNER hereby grants and conveys unto the Purchaser ALL that piece or parcel of land situate in the Western District of the said Island of New Providence being the Eastern moiety of Lot Number Forty (No.40) of Block Number Three (No.3) in a plan of Westward Villas Subdivision and First and Second Addition Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 and now filed in the Office of the Crown Lands Officer of the Colony as No.21C which said piece or parcel of land has such position boundaries shape marks and dimensions as are shown on the said diagram or plan TOGETHER WITH the benefit of the right of way so far as the Vendor can grant or assign the same over and upon the three several roads leading from West Bay Street to the Sea as shown on the plan of "Cable Beach" filed in the Office of the Crown Lands Officer of the Colony as Number 21C

EXHIBITS

F(vi)

Conveyance
 B.S.Pritchard
 to C.B.
 Livingston
 10th February
 1958

(continued)

10 TO HOLD the same unto and to the use of the
 Purchaser in fee simple subject to the said
 restrictions and conditions imposed on the said
 hereditaments by the W.E. Brown Land Company,
 Limited which said restrictions and conditions
 still continue AND the Purchaser with the object
 and intention of affording to the Vendor a full and
 sufficient indemnity in respect of the restrictions
 and conditions imposed upon the said hereditaments
 and premises hereby granted and conveyed but not
 further or otherwise hereby covenants with the
 Vendor that the Purchaser his heirs executors
 administrators and assigns will henceforth duly
 observe and perform such restrictions and
 conditions and at all times indemnify the Vendor
 his executors administrators and assigns against
 all actions claims and demands whatsoever in
 respect of the said restrictions and conditions
 or any of them so far as the same affect the said
 hereditaments hereby assured AND the Vendor hereby
 20 acknowledges the right of the Purchaser at the
 expense of the Purchaser to production of all
 documents of title in his possession relating to
 the said piece or parcel of land and to delivery of
 copies thereof and hereby undertakes for the safe
 custody thereof

IN WITNESS WHEREOF the said parties
 hereto have hereunto set their hands
 and seals

30 (Sgd) B.S. Pritchard

Signed Sealed and Delivered by the said Bertram
 Savage Pritchard on the Tenth day of February in
 the year of Our Lord One thousand nine hundred
 and fifty eight in the presence of :-

(Sgd) Yvonne Knowles

(Sgd) Carl B. Livingston

40 Signed Sealed and Delivered by the said Carl
 Bronson Livingston on the Tenth day of February in
 the year of Our Lord One thousand nine hundred and
 fifty eight in the presence of :-

(Sgd) Eldwyth J. Higgs

EXHIBITS

F(ix) - Letter Mrs. Kernochan to Chairman
Town Planning Department

F(ix)

Letter Mrs.
Kernochan to
Chairman
Town Planning
Department
8th January
1968

Box 393
Nassau, N. P.
8th January 1968

Chairman, Town Planning Department
Hampshire House
Nassau, N. P.

Dear Sir:

We have just returned from abroad, to our home in Westward Villas. We learned with dismay that Texaco Antilles Company intends to erect a gas and service station directly behind our home on Block 3, of Westward Villas.

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Our lots are number 39 and half of lot 40, on Block 3 on the southern side of the service-road right of way. The proposed gas station would be on West Bay Street, directly in back of us.

We feel that such a gas station would be a very real public nuisance. The fumes and noise would be unhealthy and distasteful; and it would seriously deteriorate the value of our property and dsstroy the peace of our home. And I quote the restrictive covenant which was specifically inserted in the title deed to safeguard these amenities:

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"No machine shop, public garage or manufacturing establishment will be permitted on any of the lots of Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid."

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There is no public need of a gas station in this area at any rate. This area was designed exclusively for residential occupation; or such small shops as might be needed to serve the area.

Respectfully awaiting your answer, I am

Very truly yours,

Dorothy (Mrs. C.L.) Kernochan

H - Letter M. Swanson to J.M. Thompson

EXHIBITS

Our Ref: No. AP/237/67-W

H

TOWN PLANNING DEPARTMENT

Letter
M. Swanson to
J.M. Thompson

P.O. Box 1611 Nassau, Bahamas

31st January
1968.

31st January, 1968

Mr. James M. Thompson,
Chambers,
P.O. Box 4206,
Nassau, N.P.

10 Dear Sir,

TEXACO ANTILLES LIMITED, WESTWARD VILLAS

(i) I thank you for your letter dated 15th January, 1968, regarding service station within the Westward Villas subdivision.

(ii) This application was originally approved in principle at the Town Planning Committee meeting of 20th September, 1967, and final plans approved at the meeting of 22nd November, 1967.

20 (iii) Regarding contravention of restrictive covenants applicable to this subdivision, this should be regarded as a separate legal matter since the Town Planning Committee is not bound to accept any restrictions placed on covenants by a developer

Yours faithfully,

Mackie Swanson
Acting Town Planning Officer

MS/jc

EXHIBITS

J - Letter B. Marwick to J.M. Thompson

J

Letter
B.Marwick to
J.M.Thompson
22nd January
1968

Ref. No.MOW/DC.1062/81

MINISTRY OF WORKS
Nassau, N.P. Bahamas

22nd January 1968

James M. Thompson, Esq.,
P.O. Box 4206,
NASSAU, Bahamas.

Sir,

Texaco Antilles Limited: Westward Villas

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I am directed to refer to your letter JMT.jg of the 15th January 1968 and to inform you that according to my records building permit No. 12356 was issued to Texaco Antilles Limited on the 30th November, 1967 by the Ministry of Works the prior approval of the Town Planning Committee having been obtained.

2. I have forwarded a copy of your letter to the Acting Town Planning Officer in order that the Town Planning Committee may be informed of the second paragraph thereof and deal with the point raised.

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Yours obediently,

(Sgd) Brian Marwick,

Permanent Secretary.

BM/bp

cc. The Acting Town Planning Officer.

K - Conveyance W.E. Brown Land Company Limited
to Ocean and Lake View Company Limited

EXHIBITS

K

BAHAMA ISLANDS
 New Providence.

Conveyance
 W.E. Brown Land
 Company
 Limited to
 Ocean and Lake
 View Company
 Limited

3rd April
 1935.

10 THIS INDENTURE made the Third day of April
 in the year of Our Lord One thousand nine hundred
 and thirty five BETWEEN W.E. Brown Land Company,
 Limited a company incorporated under the laws of
 the Bahama Islands and carrying on business within
 the Colony (hereinafter called the Vendors) of the
 one part AND The Ocean and Lake View Company,
 Limited a company also incorporated under the laws of
 the Bahama Islands and about to carry on business
 within the Colony (hereinafter called the
 Purchasers) of the other part WHEREAS the Vendors
 are seised in fee simple free from incumbrances of
 the hereditaments and premises intended to be
 hereby granted and conveyed and they have agreed to
 sell the same to the Purchasers for the sum of
 20 Thirty thousand dollars in the currency of the
 United States of America NOW THIS INDENTURE
 WITNESSETH that in pursuance of the said agreement
 and in consideration of the said sum of Thirty
 thousand dollars to the Vendors paid by the
 Purchasers on or before the execution of these
 presents (the receipt whereof is hereby acknowledged)
 the Vendors AS BENEFICIAL OWNERS hereby grant and
 convey unto the Purchasers ALL those pieces or
 30 parcels of land situate in the Western District of
 the said Island of New Providence being portions
 of the tract of land originally known as "Chapmans"
 or "Cunninghams" the said pieces or parcels of
 land having such positions boundaries shapes and
 dimensions as are shown on the diagram or plan
 hereto attached marked "A" and being delineated on
 those parts which are coloured Pink of the said
 diagram or plan marked "A" TO HOLD the same unto
 and to the use of the Purchasers in fee simple AND
 40 ALSO ALL that piece parcel or strip of land being
 a portion of the street or road known as Malcolm
 Avenue situate as aforesaid and being a portion of
 the said tract of land known as "Chapmans" or
 "Cunninghams" the said piece parcel or strip of
 land having such position boundaries shape and
 dimensions as are shown on the said diagram or plan
 hereto attached marked "A" and being delineated on
 that part which is coloured Brown of the said
 diagram or plan marked "A" TO HOLD the same unto and

EXHIBITS

K

Conveyance
W.E. Brown Land
Company
Limited to
Ocean and Lake
View Company
Limited

3rd April 1935

(continued)

to the use of the Purchasers in fee simple BUT subject to such rights of way (either express or implied) as are now owned or possessed by or vested in the owners and occupiers of any part or parts of the Subdivision known as Sky Line Villas AND ALSO ALL that piece or parcel of land situate as aforesaid being a portion of the tract of land known as "Grahams" the said piece or parcel of land having such position boundaries shape and dimensions as are shown on the said diagram or plan hereto attached marked "A" and being delineated on that part which is coloured Green of the said diagram or plan marked "A" TO HOLD the same unto and to the use of the Purchasers in fee simple AND ALSO ALL those pieces or parcels of land situate as aforesaid being portions of the tracts of land known as "The Caves" and "Delaporte" the said pieces or parcels of land having such positions boundaries shapes and dimensions as are shown on the said diagram or plan hereto attached marked "A" and being delineated on those portions which are coloured Yellow of the said diagram or plan marked "A" TO HOLD the same unto and to the use of the Purchasers in fee simple AND ALSO ALL those pieces or parcels of land situate as aforesaid which said pieces or parcels of land form portions of the Subdivision known as Westward Villas the said Subdivision being a portion of the said tract of land originally known as "Chapmans" or "Cunninghams" the said pieces or parcels of land having the positions boundaries shapes and dimensions as are shown on the diagram or plan hereto attached numbered 1 and being delineated on those parts which are coloured Pink of the said diagram or plan numbered 1. Together with the benefit so far as the Vendors can grant or assign the same of the right of way over and upon the three several roads leading from West Bay Street to the Sea which said right of way was granted to the Vendors by an indenture dated the Eighth day of June, A.D. 1925 now of record in the Registry of Records in Book H.12 at pages 327 to 338 and made between John McCormick and others of the one part and the Vendors of the other part TO HOLD the same unto and to the use of the Purchasers in fee simple AND ALSO ALL those pieces parcels strips of land or roadways situate as aforesaid which said pieces parcels strips of land or roadways form portions of the said Subdivision known as Westward Villas the said pieces parcels strips

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of land or roadways having such positions boundaries shapes and dimensions as are shown on the said diagram or plan hereto attached numbered 1 and being delineated on those parts which are coloured Brown of the said diagram or plan numbered 1 TO HOLD the same unto and to the use of the Purchasers in fee simple BUT subject to such rights of way (either express or implied) as are now owned or possessed by or vested in the owners and occupiers of any part or parts of the said Subdivision known as Westward Villas AND ALSO ALL those pieces or parcels of land situate as aforesaid which said pieces or parcels of land form portions of the Subdivision known as Sky Line Villas the said Subdivision being a portion of the said tract of land originally known as "Chapmans" or "Cunninghams" the said pieces or parcels of land having such positions boundaries shapes and dimensions as are shown on the diagram or plan hereto attached numbered 2 and being delineated on those parts which are coloured Pink of the said diagram or plan numbered 2 TO HOLD the same unto and to the use of the Purchasers in fee simple AND ALSO ALL those pieces parcels strips of land or roadways situate as aforesaid which said pieces parcels strips of land or roadways form portions of the said Subdivision known as Sky Line Villas the said pieces parcels strips of land or roadways having such position boundaries shapes and dimensions as are shown on the said diagram or plan hereto attached numbered 2 and being delineated on those parts which are coloured Brown of the said diagram or plan numbered 2 TO HOLD the same unto and to the use of the Purchasers in fee simple BUT subject to such rights of way (either express or implied) as are now owned or possessed by or vested in the owners and occupiers of any part or parts of the said Subdivision known as Sky Line Villas AND ALSO ALL those pieces or parcels of land situate as aforesaid which said pieces or parcels of land form portions of the Subdivision known as Sea Beach Subdivision and Addition the said Subdivision and Addition being a portion of the tract of land originally known as "The Caves" and "Delaporte" the said pieces or parcels of land having such positions boundaries shapes and dimensions as are shown on the diagram or plan hereto attached numbered 3 and being delineated on those portions which are coloured Red of the said diagram or plan numbered 3 TO HOLD the same unto and to the use of the Purchasers in fee

EXHIBITS

K

Conveyance
 W.E. Brown Land
 Company
 Limited to
 Ocean and Lake
 View Company
 Limited

3rd April
 1935

(continued)

EXHIBITS

K

Conveyance
W.E. Brown Land
Company
Limited to
Ocean and Lake
View Company
Limited

3rd April
1935

(continued)

simple AND ALSO ALL those pieces parcels strips of land or roadways situate as aforesaid which said pieces parcels strips of land or roadways form portions of the said Subdivision and Addition known as Sea Beach Subdivision and Addition the said pieces parcels strips of land or roadways having such positions boundaries shapes and dimensions as are shown on the said diagram or plan hereto attached numbered 3 and being delineated on those parts which are coloured Yellow 10 of the said diagram or plan numbered 3 TO HOLD the same unto and to the use of the Purchasers in fee simple BUT subject to such rights of way (either express or implied) as are now owned or possessed by or vested in the owners and occupiers of any part or parts of the said Subdivision and Addition known as Sea Beach Subdivision and Addition AND ALSO ALL other lands hereditaments and real estate if any of the Vendors of whatsoever kind the same might be and wheresoever situate in the said Island of New Providence TO HOLD the same unto and to the use of the Purchasers in fee simple 20

IN WITNESS WHEREOF W.E. Brown Land Company, Limited have caused their Common Seal to be hereunto affixed.

(Sgd) F.W. Fuzzard

President

The Common Seal of W.E. Brown Land Company Limited was affixed hereto by F.W. Fuzzard the President of the said Company and the said F.W. Fuzzard affixed his signature hereto at the City of Miami in the State of Florida one of the United States of America on the Third day of April in the year of Our Lord One thousand nine hundred and thirty five in the presence of :- 30

(Sgd) Andrew T. Healy

Secretary

L - Conveyance W.E. Brown Land Company Limited
to H.F. Butler

EXHIBITS

L

BAHAMA ISLANDS
 New Providence.

Conveyance
 W.E. Brown
 Land
 Company
 Limited to
 H.F. Butler
 22nd March
 1928.

10 THIS INDENTURE, made the twenty second day of
 March in the year of Our Lord One thousand nine
 hundred and twenty eight BETWEEN W.E. BROWN LAND
 COMPANY LIMITED, a Company incorporated under the
 laws of the Bahama Islands, and carrying on
 business within the Colony (hereinafter called the
 Company) of the one part AND HERMAN FERGUSON
 BUTLER of Nassau, N.P. Bahamas, (hereinafter called
 the Purchaser) of the other part

20 WHEREAS the Company are seized in fee simple
 of the lot of land intended to be hereby granted
 and conveyed being part of a tract of land known as
 Westward Villas Subdivision and First and Second
 Addition Westward Villas, which has been laid out
 by the Company to be sold in lots for building
 purposes according to a plan prepared by W.E. Brown
 Civil Engineer, dated February 1925, and being
 No. 21C and now filed in the office of the Surveyor
 General of the Colony; AND WHEREAS some of the
 said lots have been already sold and the conveyances
 thereof contain covenants by the purchasers to
 observe conditions and restrictions similar to those
 set forth in the Schedule hereto; AND WHEREAS the
 Company have agreed to sell to the Purchaser the
 30 lot of land intended to be hereby granted and
 conveyed at the price of THIRTEEN HUNDRED AND
 NO/100 Dollars, AND the Company and the Purchaser
 have agreed to enter into the covenants hereinafter
 contained NOW THIS INDENTURE WITNESSETH as follows:

40 1. In consideration of the sum of THIRTEEN
 HUNDRED AND NO/100 Dollars to the Company paid by
 the Purchaser on or before the execution of these
 presents (the receipt whereof is hereby acknowledged)
 the Company AS BENEFICIAL OWNERS hereby grant and
 convey unto the Purchaser ALL that lot or parcel
 of land situate in the Western District of the said
 Island of New Providence and being designated as
 Lot 31 of Block 4 in the said plan, together with
 the right to enforce for the benefit of the said
 lot or parcel of land intended to be hereby granted
 and conveyed all covenants entered into by purchasers
 of other lots or portions of Westward Villas Sub-
 division and First and Second Addition Westward

EXHIBITS

L

Conveyance
W.E. Brown
Land
Company
Limited to
H.F. Butler
22nd March
1928

(continued)

Villas aforesaid for the observance of conditions and restrictions similar to those set forth in the Schedule hereto TO HOLD the same unto and to the use of the Purchaser in fee simple

2. The Purchaser as to the lot or parcel of land intended to be hereby granted and conveyed (and with intent to bind all persons in whom the said lot or parcel of land shall for the time being be vested but so as not to be personally liable under this covenant after he has parted with the same) doth hereby covenant with the Company, their successors and assigns AND the Company as to those lots or portions of Westward Villas Sub-division and First and Second Addition Westward Villas aforesaid which now remain unsold (and with intent to bind all persons in whom the same shall for the time being be vested, but so as not to be liable under this covenant as to any lot or lots of land after they have parted with the same) do hereby covenant with the Purchaser his heirs and assigns that they, the Company and the Purchaser respectively and all persons deriving title under them respectively, will at all times hereafter observe in respect of the lots of land vested in them respectively all the conditions and restrictions set forth in the Schedule hereto it being the intention of the parties hereto that the said conditions and restrictions shall be mutually enforceable by and against all owners for the time being of the said lots of land respectively. 10 20 30

3. The Purchaser for himself his heirs and assigns, hereby covenants with the Company, their successors and assigns (and so that this covenant shall, so far as practicable, be enforceable by the owners occupiers and tenants for the time being of the said tract of land known as Westward Villas Subdivision and First and Second Addition Westward Villas which has been laid out as aforesaid), that all and singular the conditions and restrictions set forth in the Schedule hereto shall run with the land and shall bind the said lot or parcel of land intended to be hereby granted and conveyed and all subsequent owners, occupiers and tenants thereof; AND ALSO that he, the Purchaser and the persons deriving title under him, will henceforth and at all times hereafter observe and perform the said conditions and restrictions. 40

4. The Purchaser, for himself, his heirs and assigns, hereby admits and acknowledges the ownership of the Company, their successors and assigns in and to all the streets, roads, avenues and paths described, delineated and set out in the plan hereinbefore mentioned and referred to and in and to all the water supply system now on the said tract of land (or to be placed by the Company, their successors or assigns on the said tract of land), which has been laid out as aforesaid and known as Westward Villas Subdivision and First and Second Addition Westward Villas.

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5. The Company, for themselves, their successors and assigns do hereby declare that the Purchaser, his heirs, executors, administrators and assigns shall be entitled to the benefit of the similar covenants, conditions and restrictions entered into by any other purchaser or purchasers of any portion or portions of the said tract of land known as Westward Villas Subdivision and First and Second Addition Westward Villas which has been laid out as aforesaid

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6. The Company, for themselves, their successors and assigns, do hereby declare that the Purchaser, his heirs, executors, administrators and assigns as follows: That the conditions and restrictions set forth in the Schedule hereto shall be included in all conveyances of all lots in the Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid except those lots in Blocks Two (2) Three (3) Four (4) and Five (5); AND ALSO that the Company their successors or assigns will pave the streets of Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid and provide sidewalks and ornamental light posts; AND ALSO that the Company, their successors or assigns will provide or cause to be provided a suitable water supply system; AND ALSO that the Company, their successors or assigns will permit and allow the Purchaser, his heirs, executors, administrators and assigns the free and unrestricted use of their rights in the streets of Cable Beach, lying to the North of Westward Villas Subdivision and all beach and other privileges (if any) incidental thereto.

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7. AND IT IS HEREBY LASTLY AGREED AND DECLARED that the violation in whole or in part of the conditions and restrictions set forth in the

EXHIBITS

L

Conveyance
W.E. Brown
Land
Company
Limited to
H.F. Butler

22nd March
1928

(continued)

EXHIBITS

I

Conveyance
W.E. Brown
Land
Company
Limited to
H.F. Butler
22nd March
1928
(continued)

Schedule hereto by the Purchaser, his heirs, executors, administrators or assigns, or by the owner or owners for the time being of the said lot or parcel of land hereinbefore described and intended to be hereby granted and conveyed, shall cause the said lot or parcel of land to revert to the Company, their successors or assigns and shall entitle the Company, their successors or assigns to immediately enter upon the said lot or parcel of land without notice and take possession of the same with full title in fee simple together with all improvements thereon, AND no waiver of any of the said conditions and restrictions, express or implied or failure for any length of time to enforce the same shall affect the enforcement thereof at any time. 10

THE SCHEDULE ABOVE REFERRED TO

Conditions and Restrictions

The words "the said premises" said herein mean the hereditaments and premises hereby granted and conveyed. 20

1. No residence shall be constructed or erected on any of the lots of Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid at a less cost than Three thousand five hundred dollars (\$3,500) to be actually expended in construction and erection and not for fees in connection therewith.

2. No building shall be constructed or erected on any of the lots in Westward Villas Subdivision and First and Second Addition Westward Villas until after the plans, specifications and location of the building shall have been approved by the Company, their successors or assigns. 30

3. No residence or building, including porches or projections of any kind above the height of the first, or ground floor shall be erected at a less distance than twenty (20) feet from the front or street line of any lot in the said Westward Villas Subdivision and First and Second Addition Westward Villas, nor nearer than twelve (12) feet from the back line, nor nearer than three (3) feet from either side line of any lot, provided that the set back or building line 40

herein established and fixed shall not apply to Blocks Two (2) to Five (5), inclusive.

EXHIBITS

L

4. No more than one private residence and one garage or one combined garage and servants' quarters shall be built on any lot except on the lots in Blocks Two (2) to Five (5), inclusive. The Company reserves the right, however, to remove the restrictions from any or all of the lots of the said Blocks Two (2) to Five (5), inclusive, to allow the building upon them of hotels or apartment houses or stores for the sale of provisions or other merchandise, but said stores shall be permitted to be built only on the northern half of Blocks Three (3) and Four (4). No machine shop, public garage or manufacturing establishment will be permitted on any of the lots of Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid.

Conveyance
W.E. Brown
Land
Company
Limited to
H.F. Butler
22nd March
1928

(continued)

5. No outside toilet will be permitted in any part of said Westward Villas Subdivision and First and Second Addition Westward Villas, but there shall be constructed by the Purchaser, in connection with any residence or apartment house on any of said lots, a septic tank in accordance with specifications approved in writing by the Company, their successors or assigns.

6. No swine, cows or poultry shall be kept, raised or maintained in or on Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid.

7. No unlawful or immoral use shall be made of the said premises nor shall the same nor any part thereof nor any interest therein be sold, leased or otherwise conveyed to any person other than a full-blooded member of the Caucasian race; provided that nothing herein contained shall prevent the keeping and maintaining of servants on the said property or lots for reasonable family use.

8. No spirituous, malt or intoxicating liquor shall be manufactured, bartered or sold on any of the lots of Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid.

9. An easement consisting of a strip of land ten feet wide shall be reserved in the rear of each

EXHIBITS

L

Conveyance
W.E. Brown
Land
Company
Limited to
H.F. Butler
22nd March
1928
(continued)

lot or upon the side of certain lots, where indicated by dotted lines upon the plan of Westward Villas Subdivision and First and Second Addition Westward Villas, for the purpose of using the same for wire lines, pipe lines, sewers, water mains, poles and other purposes.

10. No lot in Westward Villas Subdivision and First and Second Addition Westward Villas aforesaid shall be subdivided, provided that this restriction shall not prevent any owner from conveying any portion of any lot to any adjoining owner.

10

IN WITNESS WHEREOF the Company have caused their Common Seal to be hereunto affixed and the Purchaser hath hereunto set his hand and seal.

(Sgd) W.E. Brown

President

The Common Seal of W.E. Brown Land Company Limited was hereunto affixed by William Emmons Brown, the President of the said Company, and the said William Emmons Brown affixed his signature hereto on the twenty second day of March in the year of Our Lord One thousand nine hundred and twenty eight in the presence of :

20

(Sgd) W. Anderson

Secretary

Herman Butler
(Purchaser will sign here)

Signed sealed and delivered by the said Herman Ferguson Butler on the 27th day of March in the year of Our Lord one thousand nine hundred and twenty eight in the presence of :-

30

(Sgd) Henry P. Sands

Attorney-at-Law,

Nassau, Bahamas.

N - Conveyance Ocean and Lake View Company
Limited to Bahamas Limited.

EXHIBITS

N

BAHAMA ISLANDS
 New Providence

Conveyance
 Ocean and
 Lake View
 Company
 Limited to
 Bahamas
 Limited

27th January
 1939.

10 THIS INDENTURE made the 27th day of January
 in the year of Our Lord One thousand nine hundred
 and thirty nine BETWEEN THE OCEAN AND LAKE VIEW
 COMPANY LIMITED, a company incorporated under the
 laws of the Bahama Islands and carrying on
 business within the Colony (hereinafter called
 "the Vendors") of the one part and BAHAMAS LIMITED
 a company also incorporated under the laws of the
 Bahama Islands and carrying on business within the
 Colony (hereinafter called "the Purchasers") of the
 other part WHEREAS the Vendors are seised in fee
 simple in possession free from incumbrances of the
 hereditaments and premises intended to be hereby
 granted and conveyed and they have agreed to sell
 the same to the Purchasers for the sum of Eight
 20 thousand and five hundred (8,500) Pounds and
 whereas the hereditaments firstly hereinafter
 described at the time they were conveyed to the
 Vendors were expressly or impliedly made SUBJECT
 to the restrictions and conditions set out in the
 First Schedule to an Indenture dated the 17th day
 of July A.D. 1937 and now of record in the
 Registry of Records in Book E 14 at pages 34 to
 35 and made between the late Max Mueller of the
 first part the Vendors of the second part and
 30 Prospect Limited of the third part and are now
 subject to the restrictions and conditions set out
 in the Third Schedule of the said Indenture and
 also set out in the Schedule hereto and whereas the
 hereditaments secondly hereinafter described are
 SUBJECT to certain restrictions and conditions
 imposed on the said hereditaments by the W.E. Brown
 Land Company Limited which said restrictions and
 conditions still continue

40 NOW THIS INDENTURE WITNESSETH that in pursuance
 to the said agreement and in consideration of the
 said sum of Eight thousand and five hundred (8,500)
 Pounds to the Vendors paid by the Purchasers on or
 before the execution of these presents (the
 receipt whereof is hereby acknowledged) the Vendors
 as BENEFICIAL OWNERS hereby grant and convey to the
 Purchasers ALL THOSE pieces or parcels of land
 situate in the Western District in the Island of

EXHIBITS

N

Conveyance
Ocean and
Lake View
Company
Limited to
Bahamas
Limited

27th January
1939

(continued)

New Providence being lots number Eight to Sixteen (8 to 16) inclusive of Block Thirty-seven (37) and lots number Eight (8) Nine (9) and Ten (10) of Block Forty-four (44) of the Subdivision known as Skyline Villas the said pieces or parcels of land having such positions boundaries shapes and dimensions as are shown on the diagram or plan hereto attached marked "A" and being delineated on those parts which are coloured Pink on the said diagram or plan TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple subject to the said conditions and restrictions contained in the Schedule hereto and also all those pieces parcels strips of land or roadways situated aforesaid which said pieces parcels strips of land or roadways form portions of the said Subdivision known as Skyline Villas the said pieces parcels strips of land or roadways having such positions boundaries shapes and dimensions as are shown on the said diagram or plan hereto attached marked "A" and being delineated on those parts which are coloured Brown on the said diagram or plan TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple but SUBJECT to such rights-of-way either expressed or implied as are now owned or possessed or vested in the owners or occupiers of any part or parts of the said Subdivision known as Skyline Villas AND THIS INDENTURE ALSO WITNESSETH that in pursuance to the said agreement and for the consideration aforesaid the Vendors as BENEFICIAL OWNERS hereby grant and convey unto the Purchasers ALL THOSE pieces or parcels of land situate as aforesaid being portions of the Subdivision known as Westward Villas Subdivision and First and Second Addition Westward Villas, the said pieces or parcels of land having such positions boundaries shapes and dimensions as are shown on the diagram or plan hereto attached marked "B" and being delineated on those parts which are coloured Pink of the said diagram or plan TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple SUBJECT to the said restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company Limited which said restrictions and conditions still continue and also ALL THOSE pieces parcels strips of land or roadways situate aforesaid which said pieces parcels strips of land or roadways form portions of the said Subdivision known as Westward Villas Subdivision and First and Second Addition

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10 Westward Villas the said pieces parcels strips of
land or roadways having such position boundaries
shapes and dimensions as are shown on the said
diagram or plan hereto attached marked "B" and
being delineated on those parts which are coloured
Brown on the said diagram or plan TO HOLD the same
unto and to the use of the Purchasers and their
assigns in fee simple but SUBJECT to such rights-
of-way either expressed or implied as are now
owned or possessed or vested in the owners or
occupiers of any part or parts of the said Sub-
20 division known as Westward Villas Subdivision and
First and Second Addition Westward Villas.

Exhibits

N

Conveyance
Ocean and
Lake View
Company
Limited to
Bahamas
Limited

27th January
1939

(continued)

THE SCHEDULE HEREINBEFORE REFERRED TONo. 1

20 No portion of the said piece or parcel of land
known as "Skyline Villas" Nassau Lake nor any
interest therein shall be sold leased or in any
wise conveyed or transferred to any person who is
not a pure blooded member of the white race provided
that nothing herein contained shall prevent the
keeping and maintaining of servants for reasonable
family use.

No. 2

No swine cattle or poultry shall be kept raised or
maintained on any part of the said piece or parcel
of land known as "Skyline Villas" Nassau Lake

No. 3

30 No business or trade of any kind whatsoever
(including the operation of a hotel, hospital or
club) shall be carried on in or upon any part of
the said piece or parcel of land known as "Skyline
Villas" Nassau Lake.

IN WITNESS WHEREOF the Ocean and Lake View
Company Limited have caused their Common Seal to be
hereunto affixed

Guy R. Baxter

President

EXHIBITS

N

Conveyance
Ocean and
Lake View
Company
Limited to
Bahamas
Limited
27th January
1939
(continued)

(The Common Seal
of the Ocean & Lake
View Co. Ltd.)

The Common Seal of the Ocean and Lake View Company Limited was affixed hereto by Guy Robert Brooke Baxter, the President of the said Company, and the said Guy Robert Brooke Baxter affixed his signature hereto on the 27th day of January in the year of Our Lord One thousand nine hundred and thirty nine in the presence of :-

10

F.H. Christie

Secretary

IN WITNESS WHEREOF Bahamas Limited have caused their Common Seal to be hereunto affixed.

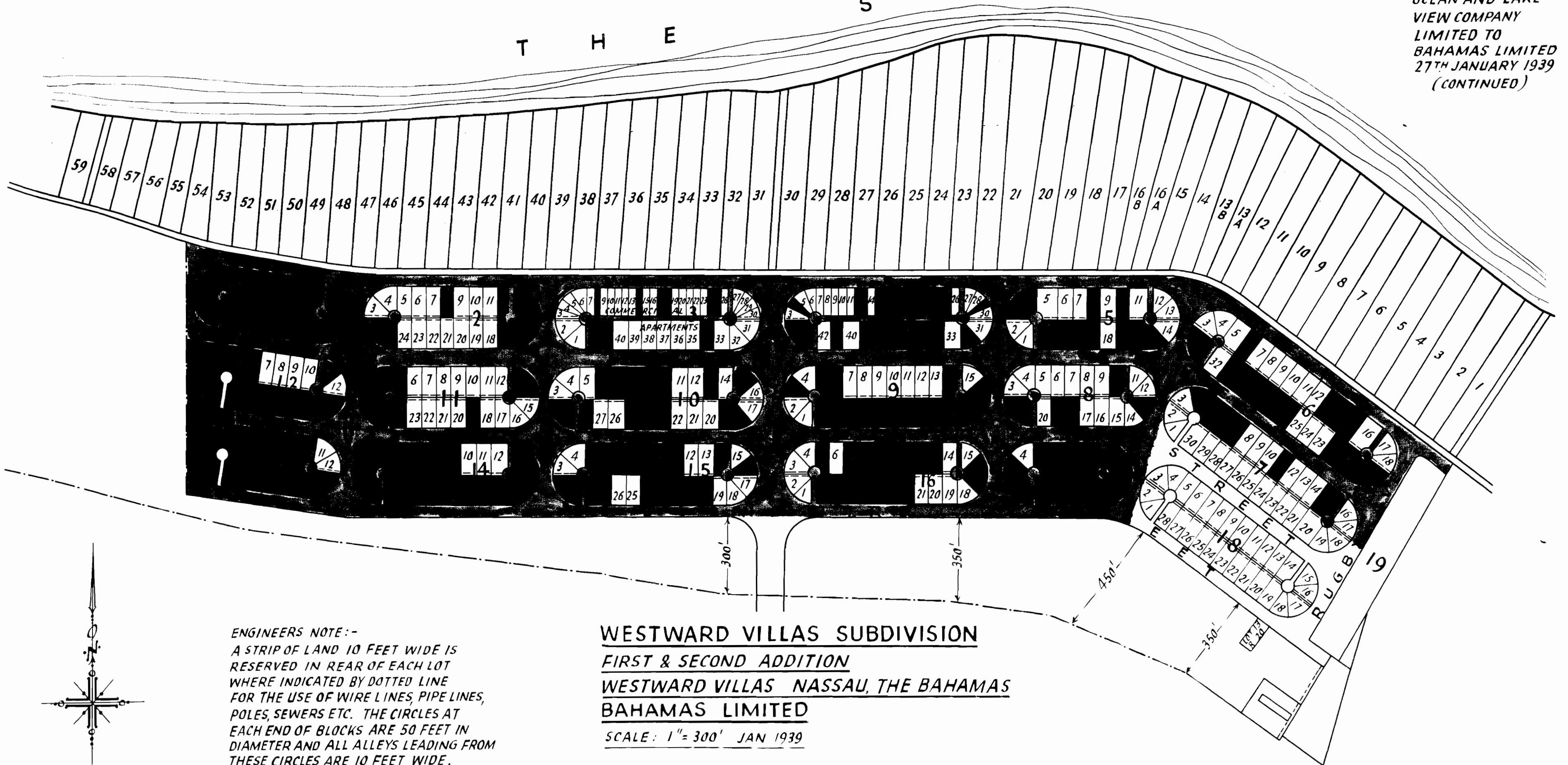
H.G. Christie

President

(Common Seal of
Bahamas Ltd.)

T H E S E A

EXHIBITS
N
CONVEYANCE
OCEAN AND LAKE
VIEW COMPANY
LIMITED TO
BAHAMAS LIMITED
27TH JANUARY 1939
(CONTINUED)



ENGINEERS NOTE :-
A STRIP OF LAND 10 FEET WIDE IS
RESERVED IN REAR OF EACH LOT
WHERE INDICATED BY DOTTED LINE
FOR THE USE OF WIRE LINES, PIPE LINES,
POLES, SEWERS ETC. THE CIRCLES AT
EACH END OF BLOCKS ARE 50 FEET IN
DIAMETER AND ALL ALLEYS LEADING FROM
THESE CIRCLES ARE 10 FEET WIDE.

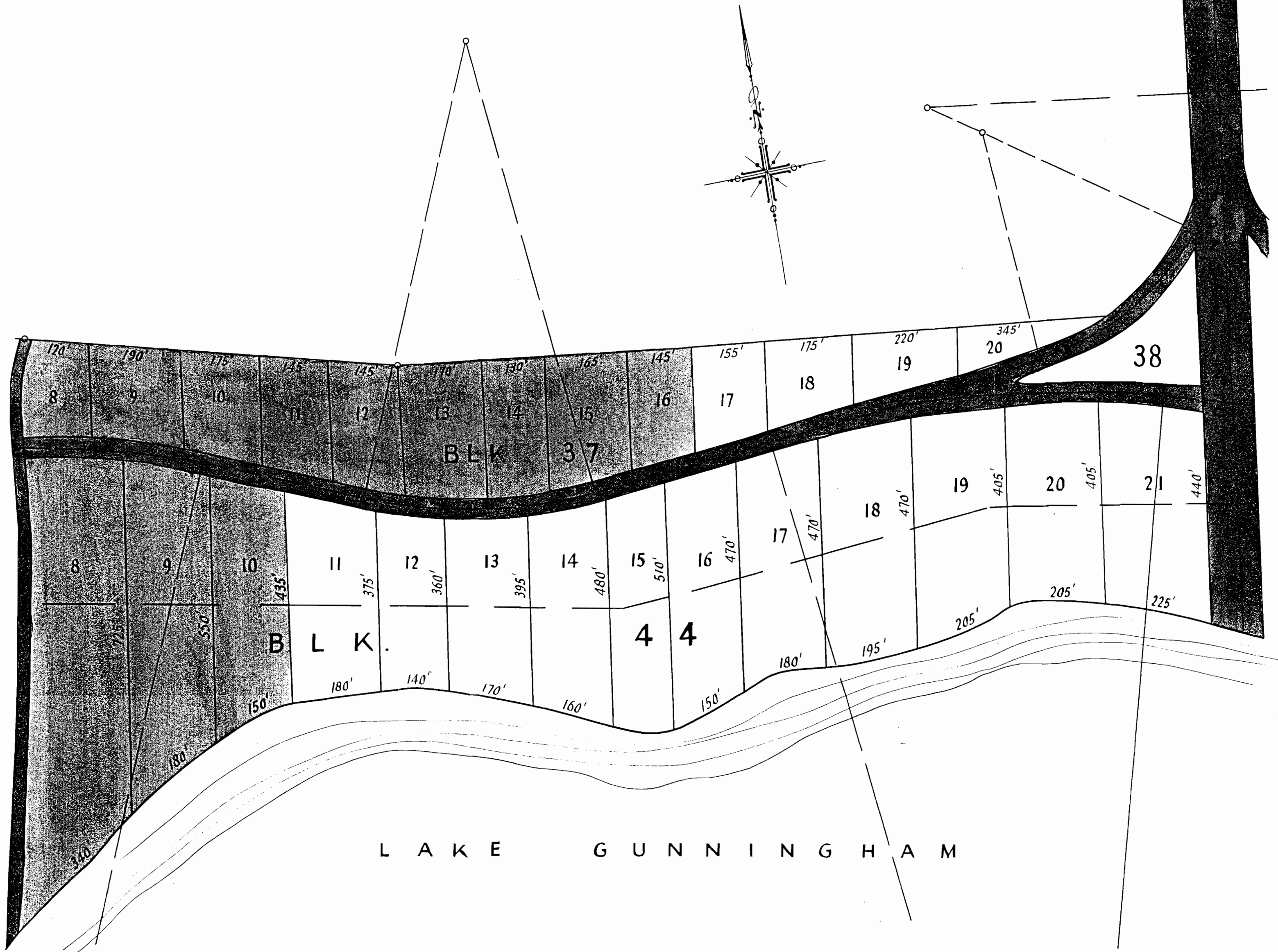
WESTWARD VILLAS SUBDIVISION
FIRST & SECOND ADDITION
WESTWARD VILLAS NASSAU, THE BAHAMAS
BAHAMAS LIMITED

SCALE: 1" = 300' JAN 1939

BLOCKS 1 TO 6 INCLUSIVE ARE WESTWARD VILLAS SUBDIVISION
BLOCKS 7 TO 12 INCLUSIVE ARE FIRST ADDITION WESTWARD VILLAS
BLOCKS 13 TO 18 INCLUSIVE ARE SECOND ADDITION WESTWARD VILLAS

SKY LINE VILLAS NASSAU BAHAMAS.

EXHIBITS
N
CONVEYANCE
OCEAN AND LAKE
VIEW COMPANY
LIMITED TO
BAHAMAS LIMITED
27TH JANUARY 1939
(CONTINUED)



D.A. - Abstract of Title of Anjask LimitedEXHIBITS

TO

D.A.

10 ALL that piece or parcel of land situate in the Western District of the Island of New Providence being Lots Numbers Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), and Eighteen (18) of Block Number Three (3) in a plan of Westward Villas Subdivision and First and Second Additions Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 and filed in the Crown Lands Office of the Colony as Number 21C.

Abstract of
Title of
Anjask
Limited
Undated

LOT NO. 13

1935

3rd April

20 1. An Indenture of this date made between W.E. Brown Land Company Limited (the Vendors) of the one part and The Ocean and Lakeview Company Limited (the Purchasers) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £30,000 to the Vendors paid by the Purchasers the Vendors as Beneficial Owners thereby granted and conveyed unto the Purchasers (inter alia)

30 ALL those pieces or parcels of land situate in the Western District of the Island of New Providence forming portions of the Subdivision known as Westward Villas being a portion of the tract of land originally known as "Chapman's" or "Cunningham's" which said pieces or parcels of land have the position shape boundaries and dimensions as shown on the diagram or plan thereto attached Nod.1 and being delineated on those parts which are coloured Pink on the diagram or plan No.1 (including Lot No.13 of Block No.3) together with the benefit so far as the Vendors could grant or assign the same of the right of way over and upon the three several roads leading from West Bay Street which said right of way was granted to the Vendors by an Indenture dated the Eighth day of June, A.D. 1925 recorded in the Registry of Records in the City of Nassau in Book H.12 at pages 327 to 333-made between John McCormick and others of the one part and the Vendors of the other part

40 TO HOLD the same unto and to the use of the Purchaser in fee simple

AND ALSO ALL those pieces parcels strips of land or roadways situate as aforesaid which said pieces parcels strips of land or roadways form portions of the Subdivision known as Westward Villas and having such position shape boundaries and dimensions as are shown on the diagram or plan thereto attached Nod.1 and being delineated on those parts which are coloured Brown on the said diagram or plan No.1

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited

Undated

(continued)

TO HOLD the same unto and to the use of the Purchasers in fee simple subject to such rights of way (either expressed or implied) as were then owned or possessed by or vested in the owners or occupiers of any part or parts of the said Subdivision known as Westward Villas.

Executed by W.E. Brown Land Company Limited.

Lodged for record on the 15th April 1935 and recorded in Book R. 13 at pages 170 to 175. The original is not produced.

10

NOTES: (1) W.E. Brown Land Company Limited did not impose any restrictive covenants or conditions.

(2) Examination of Plan No. 1 annexed to the above Indenture reveals that the "lollipops" being the 10 foot strips of road and turning circle within the boundaries of each Block and also the 10foot roadway running from East to West in the centre of some Blocks were conveyed by the above Indenture; they are coloured Pink on the said Plan.

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1942
12th January.

2. An Indenture of this date made between The Ocean and Lakeview Company Limited (the Vendor) of the one part and Chapman's Limited (the Purchaser) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £1,225 paid by the Purchaser to the Vendor the Vendor as Beneficial Owner thereby granted and conveyed unto the Purchaser (inter alia) ALL that the said Lot No. 13 of Block 3 of Westward Villas Subdivision TO HOLD the same unto and to the use of the Purchaser in fee simple subject to the restrictions and conditions imposed by W.E. Brown Land Company Limited which said restrictions and conditions still continue.

30

Recorded in Book H. 15 at page 138.

1951.
12th November

40

3. An Indenture of this date made between Chapman's Limited (the Vendors) of the one part

and Bahamian Industries Limited (the Purchasers) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £1,500 to the Vendors paid by the Purchasers the Vendors as Beneficial Owners thereby granted and conveyed unto the Purchasers

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited

Undated

(continued)

10

ALL that piece or parcel of land situate in the Western District of the Island of New Providence being Lots Numbers Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), and Eighteen (18) of Block Three (3) in a plan of Westward Villas Sub-division and First and Second Additions Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 filed in the Crown Lands Office of the Colony as No.21C which said piece or parcel of land is bounded on the North by West Bay Street on the East by Lot Number Nineteen (19) of the said Block Three (3) on

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TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple subject to the said restrictions and conditions imposed on the said hereditaments by the W.E. Brown Land Company Limited which said restrictions and conditions still continue and the Purchasers with the object and intention of indemnifying the Vendors in respect of the said restrictions and conditions but not further or otherwise thereby covenanted with the Vendors that the Purchasers and their assigns would thenceforth duly observe and perform the same and at all times indemnify the Vendors their successors and assigns against all actions claims and demands whatsoever in respect thereof so far as the same affected the hereditaments thereby assured and the Purchasers thereby specifically indemnified the Vendors their successors and assigns against any and all of the covenants restrictions and conditions so imposed upon the said hereditaments and premises as aforesaid and thereby agreed that the Vendors were not obliged to perform the covenants in respect of the said hereditaments and premises entered into by The W.E. Brown Land Company Limited with the purchasers of various lots of the Westward Villas Subdivision and the Vendors thereby acknowledged the right of the Purchasers at the expense of the Purchasers to production of all documents of title

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EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

in their possession relating to the pieces or parcels of land and to delivery of copies thereof and thereby undertook for the safe custody thereof.

Executed by both parties

Lodged for record on 8th January 1952 and recorded in Book T. 19 at pages 218 to 222. The original is produced.

1960
30th January

4. An Indenture of this date made between Bahamian Industries Limited (the Borrowers) of the first part Kelly's Lumber Yard Limited of the second part and Kelly's Hardware Limited of the third part Witnesseth that in pursuance of agreement and in consideration of the sum of £7,094.5.2. paid by Kelly's Lumber Yard Limited and Kelly's Hardware Limited to the Borrowers the Borrowers as Beneficial Owners thereby granted and conveyed unto Kelly's Lumber Yard and Kelly's Hardware all the hereditaments described in paragraph 3 above TO HOLD the same unto and to the use of Kelly's Lumber Yard and Kelly's Hardware in fee simple subject to the proviso for redemption thereafter contained.

10

20

Executed by the Borrowers.

Lodged for record on 5th February 1960 and recorded in Volume 240 at pages 524 to 530. The original is produced.

NOTE: By acknowledgement endorsed thereon dated 14th January, 1961 Kelly's Lumber Yard Limited and Kelly's Hardware Limited acknowledged under seal that the Borrowers had paid in full all moneys and interest secured by the above abstracted Indenture of Mortgage.

Registrar General's Certificate of Satisfaction dated 2nd March 1961 annexed thereto recorded in Volume 371 at pages 352 to 353A.

1961
26th January

5. An Indenture of this date made between Bahamian Industries Limited (the Vendors) of the

40

one part and Cameron Investments Limited (the Purchasers) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £8,000 paid to the Vendors by the Purchasers the Vendors as Beneficial Owners thereby granted and conveyed unto the Purchasers

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited

Undated

(continued)

10

ALL those pieces parcels or lots of land situate in the Western District of the Island of New Providence being Lots Numbered Thirteen (13), Fourteen (14), Fifteen (15), and Sixteen (16) in Block Number Three (3) of Westward Villas and First and Second Additions Westward Villas as shown on the said plan prepared by W.E. Brown filed in the Crown Lands Office of the Colony as Number 21C New Providence together with the appurtenances thereunto belonging

TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple

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The Vendors thereby acknowledged the right of the Purchasers to production of documents of title in their possession relating to the said hereditaments and premises and to delivery of copies thereof at the expense of the Purchasers and thereby undertook for the safe custody thereof damage by accidental fire and by hurricane storm tempest excepted.

Executed by the Vendors.

30

Lodged for record on 22nd March, 1961 and recorded in Volume 379 at pages 578 to 581. The original is produced.

1961
23rd December

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6. An Indenture of this date made between Cameron Investments Limited (the Vendors) and American Investment Co. Limited (the Purchasers) Witnesseth that in pursuance of agreement and in consideration of the sum of \$30,000 paid to the Vendors by the Purchasers the Vendors as Beneficial Owners thereby granted and conveyed unto the Purchasers ALL those the hereditaments described in paragraph 5 above Together with the appurtenances thereunto belonging Together with rights of way over the pieces parcels strips of land or roadways shown coloured Pink on a diagram or plan attached to an Indenture dated

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

2nd September, 1953 made between Chapman's Limited of the one part and Western Roadways Limited of the other part then of record in the Registry of Records in the City of Nassau in Book H. 20 at pages 582 to 584 for the purpose of going from the said hereditaments and premises to West Bay Street or vice versa and throughout the Subdivision known as "Westward Villas and First and Second Additions Westward Villas" TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple

10

Executed by the Vendors

Lodged for record on 10th January 1962 and recorded in Volume 473 at pages 575 to 579. The original is produced.

LOT NO. 14

1935
3rd April

7. Conveyed by W.E. Brown Land Company Limited to Ocean and Lakeview Company Limited by Indenture of this date recorded in Book R. 13 at pages 170 to 175. See paragraph 1 above

20

1939
27th January

8. An Indenture of this date made between The Ocean and Lakeview Company Limited (the Vendors) of the one part and Bahamas Limited (the Purchasers) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £8,500 to the Vendors paid by the Purchasers the Vendors as Beneficial Owners thereby granted and conveyed unto the Purchasers (inter alia)

30

ALL those pieces or parcels of land situate in the Western District of the Island of New Providence being portions of the Subdivision known as Westward Villas and First and Second Additions Westward Villas having such position boundaries shape and dimensions as are shown on the diagram or plan thereto attached marked "B" and being delineated on those parts coloured Pink of the said diagram or plan (which includes Lot Number Fourteen (14) of Block Three (3))

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TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple subject to the restrictive covenants and conditions imposed thereon by W.E. Brown Land Company Limited which said restrictive covenants and conditions still continue Together also with the strips of land or roadways shown on the said plan marked "B" and thereon coloured Brown TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple but subject to such rights of way (either expressed or implied) as were then owned by or vested in the owners or occupiers of any part or parts of the said Subdivision known as Westward Villas and First and Second Additions Westward Villas.

10

Executed by The Ocean and Lakeview Company Limited and by Bahamas Limited.

Lodged for record on the 15th February 1939 and recorded in Book O. 14 at pages 73 to 79. The original is not produced.

20

NOTES: (1) An inspection of the plan marked "B" on the said Indenture reveals that the "lollipops" and the road reservations and the roadways are coloured Brown, and are conveyed by this Indenture.

(2) This Indenture recites that restrictive covenants and conditions were imposed on the said hereditaments by The W.E. Brown Land Company Limited but it does not say when or by what instrument.

30

1939
3rd May

9. An Indenture of this date made between Bahamas Limited (the Vendors) of the one part and Chapmans Limited (the Purchasers) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £10,000 to the Vendors paid by the Purchasers the Vendors as Beneficial Owners thereby granted and conveyed unto the Purchasers

40

ALL those pieces or parcels of land situate in the Western District of the Island of New Providence being portions of the Subdivision known as "Westward Villas and First and Second Additions Westward Villas" the said pieces or

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

parcels of land having the positions boundaries shape and dimensions as are shown on the diagram or plan thereto attached and being delineated on those parts of the said diagram or plan which are coloured Pink (including Lot Number Fourteen (14) of Block Number Three (3)) Together with the benefit so far as the Vendors could grant or assign the rights of way over the three several roads leading from West Bay Street to the Sea the benefit of which said rights of way was granted by The Ocean and Lake View Company Limited to the Vendors by an Indenture dated 2nd May, 1939 10

TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple subject to the said restrictions and conditions imposed on the said hereditaments by W.E. Brown Land Company Limited which said restrictions and conditions still continue

AND ALSO ALL those pieces parcels strips of land or roadways situate as aforesaid forming portions of the Subdivision known as Westward Villas Subdivision and First and Second Additions thereto and being shown on the said diagram or plan thereto attached and being delineated on those parts which are coloured Brown also Malcolm Avenue 20

TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple but subject to such rights of way (either expressed or implied) as were then owned or possessed by or vested in the owners or occupiers of any part or parts of the said Subdivision known as Westward Villas Subdivision and First and Second Additions thereto. 30

Executed by both parties.

Lodged for record on the 11th May, 1939 and recorded in Book P. 14 at pages 155 to 159. The original is not produced.

1951
12th November

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10. Conveyed by Chapmans Limited to Bahamian Industries Limited by Indenture of this

date recorded in Book T. 19 at pages 218 to 222.
See paragraph 3 above.

EXHIBITS

D.A.

1960
30th January

11. Mortgaged by an Indenture of this date by Bahamian Industries Limited to Kelly's Lumber Yard Limited and Kelly's Hardware Limited. See paragraph 4 above including the note that this Mortgage has been discharged.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

10 1961
20th January

12. Conveyed by Indenture of this date by Bahamian Industries Limited to Cameron Investments Limited. See paragraph 5 above.

1961
23rd December

13. Conveyed by Indenture of this date by Cameron Investments Limited to American Investments Co. Limited. See paragraph 6 above.

20 LOT NO. 15 AND LOT NO. 16

1927
5th May

14. An Indenture of this date made between W.E. Brown Land Company Limited (the Company) and J. Baird Albury (the Purchaser) Witnesseth that in pursuance of agreement and in consideration of the sum of \$1200 to the Company paid by the Purchaser the Company as Beneficial Owner thereby granted and conveyed unto the Purchaser

30 ALL that lot or parcel of land situate in the Western District of the Island of New Providence being designated as Lots Fifteen (15) and Sixteen (16) of Block Three (3) in the said plan prepared by W.E. Brown Civil Engineer dated February 1925 and being Number 21C filed in the Office of the Surveyor General of the Colony

TO HOLD the same unto and to the use of the Purchaser in fee simple.

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

Covenant by the Purchaser to observe and perform the conditions and restrictions imposed upon the said hereditaments and contained in the Schedule to the said Indenture.

This Indenture also contains a provision that if the said restrictions and conditions shall be violated in whole or in part by the Purchaser his heirs executors administrators or assigns or by the owners or owner for the time being of the said lots of land thereby conveyed the said lots of land shall revert to the Company its successors or assigns and shall entitle the Company its successors or assigns immediately to enter upon the said lots of land without notice and to take possession of the same with full title in fee simple together with all improvements thereon.

10

Executed by the Company and signed by J. Baird Albury who does not appear to have sealed the same and whose signature is not witnessed.

20

This document has not been placed on record but the original is produced as exhibit A to the Indenture of Conveyance abstracted in paragraph 27 below.

1939
24th October

15. An Indenture of this date made between The Honourable Joseph Baird Albury (the Vendor) of the one part and Chapmans Limited (the Purchasers) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £200 to the Vendor paid by the Purchasers the Vendor as Beneficial Owner thereby granted and conveyed unto the Purchasers ALL those the hereditaments described in paragraph. 14 above TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple subject to the restrictions and conditions imposed on the said hereditaments by The W.E. Brown Land Company Limited which said restrictions and conditions still continue.

30

40

Executed by both parties.

Lodged for record on 25th October 1939 and recorded in Book Q.14 at pages 142 to 146.

The original is produced

EXHIBITS

NOTE: For affidavit of bachelorhood see paragraph 28 below.

D.A.

Abstract of
Title of
Anjask
Limited

1951
12th November

16. Conveyed by an Indenture of this date by Chapmans Limited to Bahamian Industries Limited. See paragraph 3 above.

Undated

(continued)

10 1961
30th January

17. Mortgaged by an Indenture of this date by Bahamian Industries Limited to Kelly's Lumber Yard Limited and Kelly's Hardware Limited. See paragraph 4 above including the note that this mortgage has been discharged.

1961
26th January

20 18. Conveyed by an Indenture of this date by Bahamian Industries Limited to Cameron Investments Limited. See paragraph 5 above.

1961
23rd December

19. Conveyed by Cameron Investments Limited by Indenture of this date to American Investment Co. Limited. See paragraph 6 above.

LOTS 17 and 18

1925
3rd April

30 20. Conveyed by Indenture of this date by W.E. Brown Land Company Limited to The Ocean and Lakeview Company Limited. See paragraph 1 above.

1939
27th January

21. Conveyed by Indenture of this date by The Ocean and Lakeview Company Limited to Bahamas Limited. See paragraph 8 above.

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

1939
3rd May

22. Conveyed by Indenture of this date by Bahamas Limited to Chapmans Limited. See paragraph 9 above.

1951
12th November

23. Conveyed by Indenture of this date by Chapmans Limited to Bahamian Industries Limited. See paragraph 3 above.

10

1961
30th January

24. Mortgaged by Indenture of this date by Bahamian Industries Limited to Kelly's Lumber Yard Limited and Kelly's Hardware Limited. See paragraph 4 above and the note thereto to the effect that this Mortgage has been discharged.

1961
February

25. An Indenture of this date made between Bahamian Industries Limited (the Borrowers) of the one part and Kelly's Lumber Yard Limited (the Mortgagees) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £1,000 paid by the Mortgagees to the Borrowers the Borrowers as Beneficial Owners thereby granted and conveyed unto the Mortgagees and their assigns ALL those lots being Lots Numbered Seventeen (17) and Eighteen (18) of Block Three (3) Westward Villas Subdivision TO HOLD the same unto and to the use of the Mortgagees and their assigns in fee simple subject to the proviso for redemption thereafter contained.

20

30

Executed by the Borrowers.

Lodged for record on 8th February 1961 and recorded in Volume 366 at pages 523 to 527. The original is produced.

NOTE: The above Mortgage is satisfied as evidenced by the acknowledgment endorsed thereon executed by Kelly's Lumber Yard Limited that it

40

had received payment in full of all moneys and interest secured by the said Mortgage. Registrar General's Certificate of Satisfaction dated 30th September, 1961 annexed thereto recorded in Volume 466 at pages 20 to 21.

1961
21st November

EXHIBITS

D.A.
Abstract of
Title of
Anjask
Limited

Undated

(continued)

10 26. An Indenture of this date made between Bahamian Industries Limited (the Vendors) of the one part and American Investment Co. Limited (the Purchasers) of the other part Witnesseth that in pursuance of agreement and in consideration of the sum of £4,200 paid to the Vendors by the Purchasers the Vendors as Beneficial Owners thereby granted and conveyed unto the Purchasers

20 ALL that piece or parcel of land situate in the Western District of the Island of New Providence being Lots Seventeen (17) and Eighteen (18) in Block Three (3) in a plan of Westward Villas Subdivision and First and Second Additions Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 filed in the Crown Lands Office of the Colony as Number 21C Together with the benefit of the right of way so far as the Vendors could grant the same over and upon the three several roads leading from West Bay Street to the sea as shown on the said Plan.

30 TO HOLD the same unto and to the use of the Purchasers and their assigns in fee simple subject to the restrictions and conditions imposed on the said hereditaments by The W.E. Brown Land Company Limited which said restrictions and conditions still continue And the Purchasers by way of indemnity only thereby covenanted with the Vendors that the Purchasers and their assigns would thenceforth duly observe and perform the said restrictions and conditions so far as the same were still subsisting and capable of taking effect and affected the said
40 hereditaments thereby assured.

Executed by both parties.

Lodged for record on 14th December 1961 and recorded in Volume 468 at pages 1 to 6. The original is produced.

EXHIBITSALL LOTS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

1966
14th July

27. An Indenture of this date made between American Investments Co. Limited (the Vendor) of the one part and Anjask Limited (the Purchaser) of the other part

Reciting seisin by the Vendor of the hereditaments thereafter described for an estate in fee simple in possession subject to certain restrictions and conditions imposed on the same by The W.E. Brown Land Company Limited corresponding with those mentioned in the Schedule to an Indenture made the 5th May 1927 between W.E. Brown Land Company Limited of the one part and J. Baird Albury of the other part annexed thereto as Exhibit A but otherwise free from incumbrances and agreement to sell the same to the Purchaser for a like estate in possession subject to the said restrictions and conditions but otherwise free from incumbrances at the price of B\$50,857.14 Witnesseth that in pursuance of agreement and in consideration of the sum of B\$50,857.14 then paid by the Purchaser to the Vendor the Vendor as Beneficial Owner thereby granted and conveyed unto the Purchaser ALL those the hereditaments described in the Head Note hereto Together with the benefit of the right of way so far as the Vendor could grant or assign the same over and upon the three several roads leading from West Bay Street to the sea as shown on Plan No. 21C filed in the Crown Lands Office of the Colony and Together also with a right of way over the pieces parcels strips of land or roadways shown coloured Pink on a diagram or plan attached to an Indenture dated 2nd September 1953 made between Chapmans Limited of the one part and Western Roadways Limited of the other part recorded in Book H. 20 at pages 582 to 584 for the purpose of going from the said hereditaments and premises to West Bay Street and vice versa and throughout the Subdivision known as Westward Villas and First and Second Additions Westward Villas and together with the appurtenances thereunto belonging TO HOLD the same unto and to the use of the Purchaser and its assigns in fee simple subject to the said restrictions and

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conditions imposed on the said hereditaments by the W.E. Brown Land Company Limited which said restrictions and conditions still continue and the Purchaser covenanted with the Vendor by way of indemnity only that the Purchaser and its assigns would thenceforth duly observe and perform such restrictions and conditions so far as the same were still subsisting and capable of taking effect and affected the hereditaments thereby assured and would indemnify the Vendor and its assigns.

10

Executed by both parties.

Lodged for record on August 10th, 1966 and recorded in Book 1010 at pages 123 to 136. The original is produced.

NOTE: It would appear that W.E. Brown Land Company Limited imposed the said restrictions and conditions only upon Lots 15 and 16 of Block 3 and not upon Lots 13, 14, 17 and 18.

20

AS TO THE RIGHTS OF WAY OVER THE ROADWAYS
IN WESTWARD VILLAS AND FIRST AND SECOND
ADDITIONS WESTWARD VILLAS

Lots 13 to 18 of Block 3 all front on a reservation for the widening of West Bay Street and have direct access to West Bay Street. The title to the roadways in Westward Villas is vested in Western Roadways Limited by virtue of the following Indentures:

30

1. Indenture dated 3rd April 1935 - W.E. Brown Land Company Limited to The Ocean and Lakeview Company Limited recorded in Book R. 13 at pages 170 to 175. See paragraph 1 above.

2. Indenture dated 27th January, 1939 made between The Ocean and Lakeview Company Limited and Bahamas Limited recorded in Book O. 14 at pages 73 to 79. See paragraph 8 above.

3. Conveyance dated 3rd May 1939 made between Bahamas Limited and Chapmans Limited recorded in Book P. 14 at pages 155 to 159. See paragraph 9 above.

40

4. Conveyance dated 2nd September 1953 made between Chapmans Limited and Western Roadways

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

EXHIBITS

D.A.

Abstract of
Title of
Anjask
Limited
Undated
(continued)

Limited recorded in Book H. 20 at pages 582 to 584

For the purposes of the present Abstract rights of way were granted by Western Roadways Limited and are vested in Anjask Limited by virtue of the following Conveyances:

1. Conveyance dated 26th January 1961 made between Western Roadways Limited and Cameron Investments Limited recorded in Volume 379 at pages 573 to 577. The original is produced.

2. Conveyance dated 23rd December 1961 made between Cameron Investments Limited and American Investments Co. Limited recorded in Volume 473 at pages 575 to 579. The original is produced. 10

3. Conveyance dated 29th December 1961 made between Western Roadways Limited and American Investments Co. Limited recorded in Volume 466 at pages 16 to 19. The original is produced.

1967
6th November

28. Joint Affidavit of this date by George Vincent Emile Higgs and Sigied Joseph Amoury whereby they deposed as follows :- 20

1. That they knew and were well acquainted with the Honourable Joseph Baird Albury M.D. late of the Eastern District of the Island of New Providence who died many years ago.

2. That to the best of their knowledge, information and belief the said Honourable Joseph Baird Albury was never married and died a bachelor.

Sworn by both deponents and about to be lodged for record. 30

The original is produced.

Dated the 16th day of November 1967.

HIGGS & JOHNSON

(Sgd) Lennox M. Paton.

2 - Valuation of Chester Thompson.

EXHIBITS

BAHAMAS ISLANDS
New Providence

2

Valuation of
Chester
Thompson
25th March
1968

On March 25th, 1968 I was instructed by Texaco Antilles Ltd., to inspect and value a property located in Westward Villas in the Western District of New Providence.

10 This property comprises Lot No. 39 and one half of Lot No. 40 in Block No. 3 of the Westward Villas Subdivision and has the following dimensions: ninety (90) feet frontage on Hampshire Road with a depth of one hundred and thirty (130) feet. Erected on this land is a residence of concrete block construction with wood shingle roof having the following accommodations: Three (3) bedrooms, two(2) bathrooms, living room, dining room, kitchen, screened patio and garage.

20 After considering all the known factors which might affect the value and after considering the value indicators as they are a matter of record as to the sale of comparable properties, I have come to the conclusion as to the market value of the subject property.

In my opinion a fair market value as of March 25th, 1968 isB\$40,000

30 I was further instructed to express an opinion as to the value of the subject property if a service station was to be erected on Plots 13 to 18 inclusive of Block No. 3, which lots front on West Bay Street and which backs onto the subject property for a distance of sixty(60) feet, separated however by a twenty (20) feet service right-of-way. I understand that a wall six (6) feet in height with appropriate landscaping will separate the service station from the subject property.

I am therefore of the opinion that, in such case, the fair market value of the property would be not less than.....B\$35,000

40 The undersigned has been actively engaged in the real estate business for many years and has sold extensive property in Nassau and the Out Islands of the Bahamas. I was appointed Government Assessor in 1959.

(Sgd) Chester Thompson

EXHIBITS5 - Letter Texaco Antilles Limited to M.A.Swanson

5.

September 6, 1967

Letter
 Texaco
 Antilles
 Limited to
 M.A.Swanson
 6th September
 1967.

Mr. M.A. Swanson,
 Acting Town Planning Officer,
 P. O. Box 1611,
 Nassau, Bahamas.

Dear Sir,

SERVICE STATION APPLICATION

We herewith re-submit our request for approval in principle to build a service station on a piece of land comprising lots Nos. 13-18 inclusive in Block No.3 of Westward Villas on West Bay Street. 10

We feel that because of the increase in population of Westward Villas, Delaport, and the Cable Beach area, there is a definite need for a service station.

There is at present no service station between Saunders Beach and Blake & Interfield Roads. Our proposed outlet will be of benefit to passing traffic and the residents of the surrounding area. 20

There will be no garage work such as heavy mechanical work done at this station, and apart from selling gasoline, no work will be done after 6 p.m. Thus residents of the area will not be bothered by noise. Our plans include the building of a 7 ft. high wall on the south, east and western boundaries.

We enclose herewith two copies of drawings showing the proposed location and trust this will meet with your approval. We are also attaching a perspective showing the type of station we propose to build. 30

Yours very truly,

Texaco Antilles Limited

F. Von Schilling,
 Manager.

JHL:ml
 Encs.

6 - Letter Town Planning Department to
F. Von Schilling

EXHIBITSX

6.

TOWN PLANNING DEPARTMENT

Ref: AP/237/67W P.O. Box 1611 Phone 2-2245

NASSAU, BAHAMAS.

22nd September 1967

Letter
Town
Planning
Department
to F. Von
Schilling
22nd Sept.,
1967.

Mr. F. Von Schilling,
Manager,
Texaco Antilles Ltd.
P.O. Box 4807
Nassau, Bahamas.

10

Dear Sir:

SERVICE STATION, Lots 13-18 Block 3,
WESTWARD VILLAS

1. I have to advise you that at the Town Planning Committee meeting of the 20th September, 1967, Approval in Principle, Land Use Only, was granted to the above application.

20 2. You are accordingly invited to submit detailed plans for the necessary building permit.

Yours faithfully,

(Sgd) M. Swanson

Acting Town Planning Officer

MS:ow

7 - Building Permit for Texaco Antilles Limited

EXHIBITS

BUILDING PERMIT

The Building Regulations Act

Area - WEST

Receipt No.
101800

The Town Planning Act 1961
and the Private Roads and Subdivisions Act 1961

No. of Drawings
2 x 8 = 16

12356

7.
Building Permit
for Texaco
Antilles
Limited

30th November 1969

17th October

GOVERNMENT OF THE BAHAMA ISLANDS

I/We hereby apply for permission to carry out the development described in this application and on the attached plans and drawings

(1) Applicant TEXACO ANTILLES LTD.

Address P.O. Box 4807, Nassau

Signature Victor Fragola
Name of Agent

Telephone 21887

Profession Architect Telephone 22930

Other information
on address MALCOLM'S BLDG. BAY STREET & Vic

Address P.O. Box 4775, Nassau.

NOTE: INFORMATION MUST BE SUFFICIENT TO ENABLE
OWNER TO BE LOCATED

(2) Particulars of applicant's interest in the Land:

Owner, Lessee, Prospective Purchaser etc.....

If Prospective Purchaser or Lessee whether owner or lessor has consented to proposed development
(yes or no)

Signature of
Owner of Land.....

(3) Address and location of the land to be developed in sufficient detail to enable site to be readily identified

Block 3 Lot 13 - 18 Westward Villas
West Bay Street between Malcolm Ave. & Cambridge

(4) Describe briefly the proposed development including the purpose for which the land and/or building(s) are to be used. If they are to be used for more than one purpose give details

SERVICE STATION

(5) State the purpose for which the land and/or building(s) are now used and if used for more than one purpose, give details

VACANT

(6) General information: materials for exterior finish of the building(s)

(C) - Total area in square feet (D) Estimated Cost

(A) Walls - Concrete Block

3,119 ~~sq~~

(B) Roof - Wooden Trusses, Shingles

70 L/F Wall

B.\$60,000.00

Name of Architect/Draughtsman: Address: Telephone:

Name of Land Surveyor: Address: Telephone:

(7) MODULO LTD. ARCHITECT 4775 - 22930

(8)

Conditions subject to which this permit is issued

APPROVAL SUBJECT TO SUBMISSION OF PLAN SHOWN LANDSCAPING PROPOSALS.

The reason(s) for the imposition of the condition(s) specified above is/are

Dated 30th day of November 1969

(Sgd)

For Minister for Works

INSTRUCTIONS TO APPLICANTSEXHIBITS

Complete parts 1 to 8 inclusive on the front of this form. If in doubt, ask building Clerk for assistance.

7.

Building
Permit for
Texaco
Antilles
Limited

30th November
1969

(continued)

10 Two copies of complete plans must be submitted with this form, unless the proposed building is of a commercial or industrial nature, or is a building valued over B. \$25,000 or is of unusual construction, when in such case three copies of the drawings should be submitted. If there is any doubt in the applicant's mind as to whether his building falls in any of these categories he should contact the Town Planning Department.

20 Applications for privy closets, septic tanks, rain-water tanks and wells may be obtained from the building Clerk and may be filled in and attached to this form for transmission to the Health Department. Refusal by that Department may make this application void. All large and unusual applications e.g.: Hotels, Restaurants etc., should be discussed with the Chief Health Inspector.

All plot or site plans MUST be drawn to a suitable scale and in such a manner as to enable the Building Inspector to locate the site easily. Position of building site should be shown on plot plan by MEASURED not guessed distances from some easily recognized or located area, building, street, intersection or nearest numbered pole.

30 The Architect, Engineer, Land Surveyor or Draughtsman who is/are responsible for the preparation of the plans and plot plan must sign and certify the accuracy of all copies before submission.

IF A PERMIT IS ISSUED

40 NOTES: i. Failure to adhere to any details shown on the plan forming part of the application for which permission is granted, and/or failure to comply with any condition attached to this permission, may constitute a contravention of the provisions of the Buildings Regulations Act.

ii The owner or the builder or the person to whom this permit is issued, shall give 48 hours notice to the Director of Public

EXHIBITS

7.

Building
Permit for
Texaco
Antilles
Limited
30th November
1969
(continued)

Works, before any foundations are poured, or any sewer or drains are covered up. Notice shall also be given after the building is completed, so that a final inspection may be made.

- (iii) Building must commence within twelve months of the date of issue of the permit or approval lapses
- (iv) Premises are not to be occupied until either a Final Inspection Certificate is issued or approval in writing obtained from the Director of Public Works. 10

I, the undersigned have read and understood the above instructions and should I be issued with a permit, I realize that it will be conditional to me carrying out these instructions and that failure to do this may lead to the cancellation of my permit, without the refund of any fees that may have been paid.

(Sgd) Amos J. Ferguson

20

Date - 6/12/67.

8A - Conveyance Anjask Limited to TexacoAntilles Limited

BAHAMA ISLANDS
New Providence.

EXHIBITS

8A.

Conveyance
Anjask
Limited to
Texaco
Antilles
Limited

17th January
1968.

10 THIS INDENTURE is made the Sixteenth day
of January in the year One thousand nine hundred
and sixty eight BETWEEN Anjask Limited a Company
incorporated under the Laws of the Bahama Islands
and having its Registered Office and carrying on
business in the City of Nassau in the Island of
New Providence (hereinafter called "the Vendor")
of the one part AND Texaco Antilles Limited a
Company incorporated under the Laws of Canada and
carrying on business in the City of Nassau in the
said Island of New Providence and a copy of whose
Charter of Incorporation is filed in the Office of
the Registry of Records in the said City of
Nassau under the provisions of the Statutes in that
20 behalf enacted (hereinafter called "the Purchaser")
of the other part

WHEREAS :-

(A) The Vendor is seised in fee simple in
possession subject as hereinafter mentioned but
otherwise free from incumbrances of the
hereditaments hereinafter described in the Schedule
hereto (hereinafter referred to as "the said
hereditaments") and intended to be hereby granted
and conveyed.

30 (B) The said hereditaments form a part of
certain lands situate in the Western District of
the said Island of New Providence laid out in lots
for building purposes by W.E. Brown Land Company
Limited comprising the "Westward Villas" and "First
and Second Addition Westward Villas" Subdivision
(hereinafter referred to as "the said Subdivision")
which said Subdivision is delineated on the diagram
or plan filed in the Crown Lands Office in the City
of Nassau as Plan Number 21C and the lots in the
said Subdivision form part of an estate to be
40 developed according to a general building scheme and
to this end some of the said lots are subject to
certain restrictions and conditions (hereinafter
referred to as "the said restrictions") corresponding
with those set forth in the Schedule to an Indenture
made the Fifth day of May A.D. 1927 between the said

EXHIBITS

8A.

Conveyance
Anjask
Limited to
Texaco
Antilles
Limited
17th January
1968

(continued)

W.E. Brown Land Company, Limited of the one part and J. Baird Albury of the other part on record in the Registry of Records in the said City of Nassau in Volume 1010 at pages 132 to 134; and

(C) The Vendor has agreed to sell the said hereditaments to the Purchaser for a like estate in possession subject as hereinafter appearing but otherwise free from encumbrances at the price of Eighty-three thousand two hundred and fifty dollars Bahamian Currency (B\$83,250.00) NOW THIS INDENTURE WITNESSETH as follows :-

10

1. In pursuance of the said agreement and in consideration of the said sum of EIGHTY-THREE THOUSAND TWO HUNDRED AND FIFTY DOLLARS BAHAMIAN CURRENCY (B\$83,250.00) paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER hereby grants and conveys unto the Purchaser ALL the said hereditaments described in the Schedule hereto TOGETHER WITH the appurtenances thereunto belonging AND TOGETHER ALSO WITH full and free right and liberty for the Purchaser and its agents tenants servants visitors and licensees in common with all others having the like right at all times hereafter by day or night with or without horses cattle or other animals carts carriages motor cars or other vehicles of any description for all purposes connected with the use and enjoyment of the said hereditaments described in the Schedule hereto for whatever purpose the said hereditaments may be from time to time lawfully used and enjoyed to pass and repass over along and upon the pieces parcels strips of land or roadways shown coloured Pink on the diagram or plan attached to an Indenture dated the Second day of September A.D.1953 and made between Chapmans Limited of the one part and Western Roadways Limited of the other part and now of record in the said Registry of Records in Book H.20 at pages 582 to 584 for the purpose of going from the said hereditaments to West Bay Street or vice versa and throughout the said Subdivision AND TOGETHER WITH rights of way (so far as the Vendor has power to grant or assign the same) over and upon the Three (3) several roads leading from West Bay Street to the Sea as shown on the plan of Cable Beach filed in the office of the Crown Lands Officer of the Colony as number 21C AND TOGETHER

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30

40

ALSO (so far as the Vendor has power to grant the same) WITH the right to enforce for the benefit of the said hereditaments all covenants entered into by the purchasers of other lots or portions of the said Subdivision for the observance of stipulations and restrictions similar to the said restrictions TO HOLD the same unto and to the use of the Purchaser and its assigns in fee simple subject to the said restrictions which still
 10 continue.

2. The Purchaser with the object and intention of affording to the Vendor a full and sufficient indemnity in respect of the said restrictions but not further or otherwise hereby covenants with the Vendor that the Purchaser and its assigns will henceforth duly observe and perform the said restrictions and any of them so far as the same are still subsisting and capable of taking effect and
 20 will at all times indemnify the Vendor against all actions claims and demands whatsoever in respect of the said restrictions or any of them so far as aforesaid

EXHIBITS

8A.

Conveyance
 Anjask
 Limited to
 Texaco
 Antilles
 Limited

17th January
 1968

(continued)

THE SCHEDULE HEREINBEFORE REFERRED TO

ALL that piece parcel or lot of land situate in the Western District of the said Island of New Providence being Lots Numbers Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17) and Eighteen (18) of Block Number Three (3) in
 30 a plan of Westward Villas Subdivision and First and Second Addition Westward Villas prepared by W.E. Brown Civil Engineer dated February 1925 and now filed in the Office of the Crown Lands Officer of the Colony as Number 21C the said piece parcel or lot of land having such position boundaries shape and dimensions as are shown on the said diagram or plan.

IN WITNESS WHEREOF Anjask Limited has caused its Common Seal to be affixed hereto on the 17th day of January in the year One thousand nine
 40 hundred and sixty eight.

(Sgd) Skeva Klonaris
 Vice President.

EXHIBITS

8A,

Conveyance
Anjask
Limited to
Texaco
Antilles
Limited

17th January
1968

(continued)

The Common Seal of Anjask Limited was affixed hereto by Skeva Klonaris the Vice President of the said company and the said Skeva Klonaris affixed his signature hereto in the presence of :-

(Sgd)

Secretary

ON APPEAL FROM
THE COURT OF APPEAL OF
THE BAHAMA ISLANDS

B E T W E E N :

TEXACO ANTILLES LIMITED
(Defendants) Appellants

- and -

DOROTHY KERNOCHAN and
CLIFFORD LOUIS KERNOCHAN
(Plaintiffs) Respondents

R E C O R D O F P R O C E E D I N G S

CLIFFORD TURNER & CO.,
11, Old Jewry,
London,
E.C.2R 8DS

Solicitors for the Appellants

STEPHENSON HARWOOD & TATHAM,
Saddlers' Hall,
Gutter Lane,
Cheapside,
London, E.C.2V 6BS

Solicitors for the Respondents