

Filed on behalf of the Plaintiff

Deponent: Jonathan Katan

Affidavit No: 1

Exhibits: JMK 1

Sworn: of July 2009

FILED IN THE SUPREME COURT
TURKS & CAICOS ISLANDS

Action CL /09

TIME: 7-35p DATE: 18/7/09

BY:

MARIO HOFFMANN

Plaintiff

IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS

- and -

- (1) THE EDITORS OF THE TURKS AND CAICOS WEEKLY NEWS
- (2) THE EDITORS OF THE TURKS AND CAICOS FREE PRESS
- (3) THE EDITORS OF THE TURKS AND CAICOS SUN NEWSPAPER
- (4) THE EDITORS OF WIV CHANNEL 4 NEWS
- (5) THE EDITORS OF TCI NEW MEDIA NETWORK CH 7 NEWS
- (6) THE PROPRIETORS OF THE RADIO STATION BROADCASTING ON 88.7FM
- (7) THE PROPRIETORS OF THE RADIO STATION BROADCASTING ON 92.5FM
- (8) THE PROPRIETORS OF THE RADIO STATION BROADCASTING ON 102.5FM
- (9) THE PROPRIETORS OF THE RADIO STATION BROADCASTING ON 107FM
- (10) THE EDITORS OF THE TCI JOURNAL
- (11) THE EDITORS OF TURKS & CAICOS NET NEWS

Defendant

AFFIDAVIT OF JONATHAN KATAN

I, **JONATHAN KATAN**, Attorney at Law of Miller Simons O'Sullivan Attorneys, the Beatrice Butterfield Building, Butterfield Square, Providenciales MAKE OATH and say as follows:

1. I am an attorney of the Supreme Court of the Turks and Caicos Islands employed by Miller Simons O'Sullivan as a senior associate. My firm represents Mario Hoffman in connection with the above titled matter and I am duly authorised to make this affidavit on his behalf.
2. Where the contents of this affidavit are within my own knowledge they are true and where they are not they are true to the best of my knowledge and belief and I identify

the source of information received by me. There is now shown to me an exhibited hereto marked "JK1" a bundle of documents referred to in this affidavit. Page references herein are page references to the bundle.

3. Miller Simons O'Sullivan represented Mr. Hoffmann with respect to an application for Judicial Review against the Commissioner of the Turks and Caicos Islands Commission of Inquiry 2008-2009 and the Governor of the Turks and Caicos Islands (CL92/09), which case I had conduct of. That application was dismissed by the Chief Justice and on 18th June 2009 the order relating the dismissal was perfected.
4. Having indicated that Mr. Hoffmann was going to appeal the decision made by the Learned Chief Justice and upon leave being granted by the Court to make the appeal the attorney for the Governor stated that, "*until the final determination of any appeal to the Court of Appeal (when the questions shall be reviewed) the Governor will not publish any part of the final Report of the Commission of Inquiry that contains any reference adverse to the Applicant.*" This statement was recorded in a recital to the Order.
5. I confirm that had the attorney on behalf of the Governor not made the statement they did, which my client was prepared to rely on, I was instructed to seek an order pending appeal to prevent publication in terms of the statement made by the Governor.
6. Notice of and grounds of appeal were lodged with the court on Monday 13th July 2009 and the appeal is currently listed to be heard on the 27-29th July 2009.
7. In a statement dated July 2, 2009 HE the Governor indicated said that, "*although I had hoped to publish the full Final Report now, I am not yet able to do so owing to legal proceedings brought by in TCI by two developers, Dr. Cem Kinay and Mr. Mario Hoffmann. Consequently I hope to publish a redacted version of the Final Report as soon as possible.*" [pages 1-3] No indication was given as to when the redacted report might be published.
8. At about 10 am this morning the "Redacted Report" was published by the Governor and the TCI Commission of Inquiry issued a press release confirming the same [Page 4]. Further a website, TCIJournal.com, posted an article entitled, "*Breaking News – 09:45hrs – July 18, 2009 – Press Release from Governor – the Final Redacted Report is released*" [Page 5]. Under this title was a reprint of HE the Governor's press release from today providing the link to the Commission's website, where it was possible to access and download the 'Redacted Report'.
9. If the link was followed it was possible to open and save a PDF version of the report which had on its front page a note stating, "*Redactions to this Report have been made on the authority of His Excellency the Governor pursuant to: (a) directions given by the Hon. Chief Justice in proceedings brought by Dr Cem Kinay and others, and Mr. Mario Hoffmann; and (b) an assurance given by the Hon. Attorney General in proceedings brought by Mr Jak Civre, regarding publication at this time.*" [page 5]
10. The redactions were in the form of broad black lines over various parts of the text. My client's on Island representative, Mr. Stefan Kral, called me at about 12.30 pm today to inform me that he had discovered that it was relatively easy to remove the black lines

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Defendants

AFFIDAVIT OF JONATHAN KATAN

MILLER ♦ SIMONS ♦ O'SULLIVAN

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Turks and Caicos Islands

Attorneys for the Plaintiff

Our ref: SW.PGH12327

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EXHIBIT "JK1"

This is the exhibit marked "JK1" referred to in the affidavit of Jonathan Katan sworn on the 18th day of July 2009.

Before me.....
Commissioner for Oaths/Notary Public/Justice of the Peace

Reprinted Courtesy of the TCI Journal
www.tcijournal.com

09:45 - July 2, 2009 - Text of National Address by Governor



The Governor
Turks and Caicos Islands

STATEMENT

On 16 March 2009, I published the Interim Report of the Commission of Inquiry into whether there was information that corruption or other serious dishonesty in relation to past and present elected members of the TCI House of Assembly may have taken place in recent years. In my Interim Report, the Commissioner, the Rt Hon Sir Robin Auld, found there was information in abundance pointing to a high probability of systemic corruption or serious dishonesty. In Sir Robin's view this, together with clear signs of political amorality and immaturity and of general administrative incompetence, demonstrated a need for urgent suspension in whole or in part of the Constitution and for other legislative and administrative reforms.

On 31 May Sir Robin Auld delivered his Final Report to me.

In that Report, the Commissioner has confirmed that nothing that has happened since he submitted his Interim Report has prompted him to change his original view. His close examination of the information and evidence before the Inquiry has reinforced, not weakened his conviction of a need for urgent and wide-ranging systemic change.

On systemic weaknesses, he confirms the recommendations in his Interim Report covering Partial Suspension of the Constitution and Interim Direct Rule, Criminal Sanctions and Civil Recovery, Integrity in Public Life, Crown Land Allocation, Sale and Management, and a New Constitution. Some recommendations focus on deterring or preventing corruption and other serious dishonesty, and others look at the broader constitutional and statutory framework of governance. He recommends the appointment of an independent expert on the management and allocation of Crown Land as well as strengthening the Governor's Office and Attorney General's chambers.

The Commissioner's Final Report also makes preliminary findings and recommendations including the institution of criminal investigations in relation to former Premier Michael Manley and four of his former Cabinet ministers, of possible corruption or other serious dishonesty; confirms the recommendation in the Interim Report for the establishment of a Civil and Criminal Recovery Unit and the appointment of a Special Prosecutor.

The Commissioner states that the information he has gathered points to a high probability of systemic corruption and/or other serious dishonesty involving past and present elected Members of the Legislature in recent years. This same information (and his preliminary findings against individuals) has highlighted weaknesses in the law and its administration.

Although I had hoped to publish the full Final Report now, I am not yet able to do so owing to legal proceedings brought in TCI by two developers, Dr Cem Kinay and Mr Mario Hoffmann. Consequently I hope to publish a redacted version of the Final Report as soon as possible. I remain firmly committed to publishing the full Report and will continue to defend the legal challenges and appeals so that I can do so. I strongly believe that the people of TCI deserve to see the entirety of the Final Report.

Legal proceedings are also ongoing in the UK, relating to the Order in Council made on 11 March which would suspend parts of the TCI Constitution. This was to be expected and it will take time for this to run its course.

However, I am determined to push forward now with the implementation of recommendations in the Final Report that do not depend on entry into force of the Order in Council. In order to ensure that good governance can be re-established as swiftly as possible in the TCI, I have therefore begun, with the full support and assistance of the UK Government, to appoint experts to work in areas of concern highlighted in the Final Report. These include: a Special Adviser to the Governor to oversee reform of the Public Service; three Public Finance Management Advisers; an Economic Adviser; a Good Governance Adviser; and a Crown Land Adviser. Direct support for my office has also been increased with the appointment of an additional official from the Foreign and Commonwealth Office.

A Special Prosecutor and Head of the Civil and Criminal Recovery Unit, and a Senior Investigating Officer have been identified and the necessary procedures relating to their appointment are now underway. The holders of these positions will work together with a team to conduct the investigations recommended by the Commission. I will announce further details soon.



I know that many of you, like me, wish we could have gone further today. But I can reassure that our objective remains implementation of the Order in Council and publication of the Commission of Inquiry's Final Report in full. We will not be deflected from that dual objective and will continue to defend legal challenges to its achievement. Meanwhile we are proceeding with implementation of the Commission of Inquiry's recommendations and remain determined to do everything in our power, as swiftly as possible, to tackle systemic corruption and restore good governance in TCI.

Gordon Wetherell
Governor
2 July 2009



TCI Commission of Inquiry – Press Statement 18th July 2009

His Excellency the Governor has today, at 14.00 BST, published his redacted version of my Report into governmental corruption submitted to him on 31st May 2009. The Governor's redaction results from the direction of the Hon Chief Justice Gordon Ward in the current litigation between Mario Hoffmann and Cem Kinay against the Governor and me (and an assurance given by the Hon Attorney General in proceedings brought by Jak Civre). Copies of the redacted Report and the Governor's Press Statement are available on this web-site, here.

The Commission Secretariat has now been disbanded. Any further communication on matters arising out of the Inquiry should be made to:

Malcolm Kirk
Desk Officer for Turks and Caicos and Disaster Management Co-coordinator,
Caribbean and Bermuda Section, Overseas Territories Directorate
Foreign and Commonwealth Office
K225
King Charles Street
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SW1A 2AH

E-mail: malcolm.kirk@fco.gov.uk
Tel: +44(0)20 7008 3596
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Sir Robin Auld

18th July 2009

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Reprinted Courtesy of the TCI Journal
www.tcijournal.com

BREAKING NEWS - 09:45hrs - July 18, 2009 - Press Release From Governor - The Final Redacted Report is Released

PRESS STATEMENT

"I said in my statement of 2 July that, in the absence of being able to publish the Final Report of the Commission of Inquiry in full at that time because of legal proceedings brought in TCI by two developers, I hoped to publish a redacted version as soon as possible. I am doing so today; and it can be read on www.tci-inquiry.org.

I remain firmly committed to publishing the full Report as soon as legally possible. I have consulted the Commissioner and can confirm that we both strongly believe that the people of TCI deserve to see the entirety of the Final Report, complete with the Commissioner's full explanation and analysis of the information he received and his preliminary findings and recommendations. Sir Robin has expressed to me his view that the scope of the redactions is far wider than required by the Chief Justice's direction, even as an abundance of caution. While I appreciate and respect Sir Robin's concern, and have sympathy with his view, I have had to balance it with other advice and I am grateful to Sir Robin for his understanding. The redacted version makes clear the gravity of the Commissioner's preliminary findings and I look forward to publishing the full text as soon as I am able.

I remain determined to push forward with the implementation of recommendations in the Final Report, and to ensure that the principles of good governance are restored to TCI."

Gordon Wetherell
Governor
18 July 2009

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Turks and Caicos Islands Commission of Inquiry 2008-2009

into possible corruption or other serious dishonesty in relation to past and present elected members of the Legislature in recent years

Report of the Commissioner The Right Honourable Sir Robin Auld

Note

Redactions to this Report have been made on the authority of His Excellency the Governor pursuant to: (a) directions given by the Hon. Chief Justice in proceedings brought by Dr Cem Kinay and others, and Mr Mario Hoffmann; and (b) an assurance given by the Hon. Attorney General in proceeding brought by Mr Jak Civre, regarding its publication at this time.

Presented to His Excellency, Gordon Wetherell,
Governor of the Turks and Caicos Islands