

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY SIDE  
BETWEEN

2015/CLE/gen/No.01451  
2014/CLE/gen/No.01620

JUNKANOO ESTATES LTD

First Plaintiff

YURI STAROSTENKO

Second Plaintiff

AND

IRINA STAROSTENKO

Third Plaintiff

AND

UBS (Bahamas) LTD (In Voluntary Liquidation)

Defendant

(Actions and Counterclaims consolidated by Order of the Judge dated 4 November 2015)

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STATEMENT OF CLAIM

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OVERVIEW

1. This is a new Statement of Claim issued pursuant to the Order of the Court which reads that ***"1. Action CLE/gen/No.01451 of 2015 be consolidated with the Counterclaim in Action CLE/gen/No.01620 of 2014 and that the said actions do proceed as one action." "3. The Plaintiffs in the consolidated action serve a new Statement of Claim."***
2. Action CLE/gen/No.01451 of 2015 is a genuine cross-claim to Action CLE/gen/No.01620 of 2014, they both stem from the same set of facts and the same transactions such as the same Investment Agreement and its parts such as the Commitment to Finance and the Indenture of Mortgage etc., and each of these Actions is entirely subservient to the context of the other.
3. The Plaintiffs used a single claim form to start all claims which are conveniently disposed of in the same proceedings, as follows:
  - 3.1. Claim No. 1 for breach of agreement;
  - 3.2. Claim No. 2 for specific performance for breach of statutory duty;
  - 3.3. Claim No. 3 for willful misfeasance;
  - 3.4. Claim No. 4 for repudiatory breach of agreement;
  - 3.5. Claim No. 5 for conspiracy to injure by unlawful means;
  - 3.6. Claim No. 6 for giving fraudulent preference and fraudulent trading;
  - 3.7. Claim No. 7 for breach of statute pursuant to the Fraudulent Dispositions Act;
  - 3.8. Claim No. 8 for conspiracy to defraud;
  - 3.9. Claim No. 9 for fraudulent misrepresentation;
  - 3.10. Claim No. 10 for the malicious institution of civil proceedings;
  - 3.11. Claim No. 11 for conspiracy to defraud public authority; and
  - 3.12. Claim No. 12 for malicious execution.

SUPREME COURT

NOV 14 2017

Nassau, Bahamas

4. This Statement of Claim is issued with a genuine intention of pursuing the aforesaid claims for the following purposes of:
  - 4.1. recovering unliquidated damages against UBS in respect of losses, wasted expenditures, injuries, costs etc;
  - 4.2. giving an opportunity to UBS to repay the aforesaid heads of damages, wasted expenditures, injuries, costs etc;
  - 4.3. obtaining particulars of broker's contract notes and material proof of funds passing through UBS' hands under trading contracts of the Plaintiffs at the New York Stock Exchange (NYSE);
  - 4.4. obtaining documents under a specific disclosure order;
  - 4.5. enabling court orders for the purposes of investigations by prosecution and regulatory authorities;
  - 4.6. being used in The Bahamas, in the United States, in United Kingdom and elsewhere;
  - 4.7. commencing further proceedings, including criminal, class and group litigation proceedings;
  - 4.8. reporting attempts to mislead the civil court and the other parties, competing and conflicting public interests, the illegal or unlawful conduct to the relevant prosecuting authorities;
  - 4.9. recovering the penalty for perjury;
  - 4.10. promoting the public interest in the prosecution of crime that is unrelated to the conduct of the relevant civil proceedings that:
    - 4.10.1. a civil court should have all relevant information before it;
    - 4.10.2. consideration should be given to punishing persons who mislead a civil court;
  - 4.11. obtaining guidance:
    - 4.11.1. from the Court in cases such as the present to persons engaged in financial services activities; and
    - 4.11.2. from judicial decisions and legal writings on relevant aspects of the criminal law referred to perjuries in sections 426, 432 and 433 of the Penal Code of The Bahamas.
  - 4.12. The Plaintiffs expect to recover money in the sum of USD\$6 Million or about in respect of claims for detriment, losses and liabilities or potential expense capable of assessment in money terms, suffered by the Plaintiffs resulting from the Defendant's wrongs or defaults for which the Defendant is answerable.
5. The Court may grant any remedy to which the Plaintiffs are entitled even if that remedy is not specified in this Statement of Claim.
6. The Plaintiffs will rely on matters in support of their claims, which include the following:
  - 6.1. allegations of fraud;

- 6.2. allegations in conspiracy to defraud;
  - 6.3. allegations of fraudulent preference;
  - 6.4. allegations in conspiracy to injure by unlawful means;
  - 6.5. the facts of potential illegality;
  - 6.6. details of fraudulent misrepresentations;
  - 6.7. details of all breaches of trust;
  - 6.8. notices of knowledge of a fact;
  - 6.9. details of wilful defaults;
  - 6.10. details of perjuries; and
  - 6.11. facts relating to occurrence of losses or damages.
7. Notwithstanding the seriousness of the allegations made by the Plaintiffs against the Defendant in Action CLE/gen/No.01451 of 2015 endorsed on a Writ, which was served on the Defendant on 20 October 2015, and put forward by the Plaintiffs in the course of the proceedings in Action CLE/gen/No.01620 of 2014 during 2015-2017, the Defendant made no attempt to contact the Plaintiffs and dispute their claims before filing this Statement of Claim.
8. The Defendant entered an appearance and delivered a defence, which was a mere denial and unfounded on the facts, deserving of an application for striking out not pursued by the Plaintiffs only because of the consolidating order.
9. The appearance had been entered and the defence had been delivered by the Defendant solely for the purposes of delay, which is clear from the words of the defence alone, and further confirmed by the facts that:
- 9.1. the Plaintiffs have undisputed claims in Action CLE/gen/No.01451 of 2015; and
  - 9.2. UBS procrastinated for about two (2) years over signing the consolidating order (copied and enclosed here in Appendix 1).

#### INTRODUCTION

10. This Statement of Claim:
- 10.1. (a) principally relates to a loan, banking transactions, guarantees, debt security, dealing in securities, marketplaces' and clearing facilities' regulatory instruments, clearing and settlement of securities, reporting service;
  - 10.2. (b) requires particular expertise in the financial markets; and
  - 10.3. (c) raises issues of general importance to the financial markets;
  - 10.4. (d) is filed for the identification of documents, the issues, values of the claims and the extent of the dispute between the parties in order to ensure that statement of the facts, matters, circumstances and points of law on which the Plaintiffs rely is complete, and in order to avoid that the Defendant is taken by surprise by the particulars of any claims and reliefs sought at trial and interim remedies before the trial of claims;

- 10.5. (e) is a part of statement of the case containing only facts known to all parties to the proceedings and necessary for the purpose of formulating a cause of action, and it will be considered further in that context;
- 10.6. (f) makes clear the general nature of the case of the Plaintiffs, and together with copies of their witness statements, will make the detail of the nature of the case which UBS had to meet, obvious.
11. UBS deceived and induced the Plaintiffs into making a disastrous investment to their forbearance, detriment, responsibility, loss or damage as a result of fraudulent misrepresentations, conspiracies, fraudulent trading and illegality on the part of UBS.
12. The Plaintiffs had been systematically defrauded through agency and other agreements with UBS and through dishonest assistance of certain UBS officers or agents by means of the fraudulent representations, omissions and conspiracies causing substantial economic and moral losses to Messrs Starostenko, including damages to the childhood of their six (6) then minor children during the four (4) irrecoverable years and irreversible harm such as loss of life of a loved one.

#### BACKGROUND

13. The background to the case on facts alleged herein known to the parties is as follows.
14. In the conduct of business with the Plaintiffs, UBS was thoroughly dishonest from the outset, since July 2012, when UBS offered to Messrs Starostenko a financial product through issuance of a brochure called "introducing the UBS Real Estate Collateralized Loan" (or RECL), and more particularly:
  - 14.1. in offering an opportunity for an investment business and a loan for the purposes of that investment business for five (5) years at the time, when UBS was meditating an application for voluntary winding up in The Bahamas, which was pre-announced in the Curacao Chronicles in November 2012, announced in the Nassau Guardian and the Tribune in March 2014 and took place in March 2015;
  - 14.2. in offering services of UBS AG in an investment business in The Bahamas well knowing that they could not provide these financial services of UBS AG at their branch's facility on East Street in Nassau.
15. The Plaintiffs had been induced to enter into the Investment Agreement contained, inter alia, the Commitment to Finance for a loan mainly for purposes of the investment business for the term of five (5) years.
16. The loan was secured by the real estate property belonging to the Company worth twice as much as the loan itself and situated in one of the most prestigious communities in The Bahamas.
17. Originally, the general effect of the offered arrangement was to impose
  - 17.1. upon UBS:

- 17.1.1. the obligation of opening a credit in favour of the Company to the extent of USD\$1,400,000, to be secured by the property belonging to the Company worth of B\$2,800,000;
    - 17.1.2. the obligations regarding the investment business in the exchange trading of U.S. Securities; and
  - 17.2. upon the Plaintiffs:
    - 17.2.1. the obligations regarding the interest and repayment of loan for purposes of the investment business with UBS; and
    - 17.2.2. the obligation for minimum amount of trading capital, which on facts of supervening events was:
      - 17.2.2.1. an additional security for the loan, a makeweight to real estate security, obtained by UBS by means of fraudulent misrepresentation, omissions, non-disclosure;
      - 17.2.2.2. a device through which UBS held back more than half of the loan amount, giving themselves fraudulent preference in contravention of statutory provisions conferred by bankruptcy laws; and
      - 17.2.2.3. a disposition made by UBS with an intent to defraud and at undervalue voidable at the instance of the Company thereby prejudiced under Section 4 of the Fraudulent Dispositions Act.
18. Thus, more than 50% of the loan amount was siphoned by UBS on the basis of terms contained in the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance, which in fact were terms for the additional security in cash for UBS, while the Plaintiffs were defrauded and induced to believe that that money are the trading capital which would be available for purposes of the investment business pursuant the Investment Agreement.
19. UBS failed to perform their obligations imposed under the Investment Agreement, Statute Laws and the applicable regulations of The Bahamas and the U.S.
20. The Plaintiffs claimed damages for the losses sustained by the Company due to the UBS' faults but UBS compensated the Company for only a small part of that losses and wrongfully repudiated the Investment Agreement with the Company four (4) years before expiration of its term for a period of five (5) years.
21. Certain UBS officers or agents had conspired to bring about the collapse of the Plaintiffs by engineering a "default" by the Company, with regard to its borrowings from UBS, and in fact injured the interests of the Plaintiffs by dishonestly forcing them out of the investment business four (4) years before expiration of the Investment Agreement, leaving Messrs Starostenko without funds for their business and for life.
22. UBS, without reasonable and probable cause, instigated legal proceedings where the unsubstantiated allegations against the Plaintiffs were motivated by malice, employing improper practices and equating persecution to intimidating and terrorising.

23. Certain UBS officers or agents agreed to bring about a situation which would or might deceive a public official performing public duties by filing a fraudulent affidavit with and by making false statements at a hearing before the Supreme Court.
24. The Plaintiffs started a fresh legal proceeding for these and other perjuries on the part of UBS and Attorneys for UBS contrary to sections 426, 432 and 433 of the Penal Code in the Supreme Court by filing an application, on 28 June 2017, for permission to make a committal application and by giving a notice to the Attorney General, on 27 October 2017, with a request that the Attorney General consider whether to bring proceedings for contempt of court concern allegations of interference with the course of justice be brought against UBS and Attorneys for UBS.

#### FACTS AND CHRONOLOGY

25. All the facts and the matters stated herein are known or must have been known to the Defendant and were previously stated by the Plaintiffs in the original action before this Honorable Court, the Court of Appeal of the Commonwealth of The Bahamas and the Judicial Committee of the Privy Council in written forms by way of affidavits, submissions and skeletons and orally during the hearings before these Courts.
26. In 2012, UBS offered a financial products in The Bahamas to retail customers through the issuance of a brochure called "Introducing the UBS Real Estate Collateralized Loan" communicating invitations or inducements to engage in investment activity and owing a fiduciary duty of loyalty and honesty by virtue of UBS' status as an issuer who:
  - 26.1. offers financial products to public; and
  - 26.2. enters or offers to enter an agreement the making or performance of which constitutes activities regulated by statutes.
27. Further, UBS offering financial products to public by publication of certain statements, was a person who occupies a position in which it is expected to safeguard, or not to act against, the financial interests of another person.
28. In July 2012, in the course of business, UBS made deliberate false statements which invited or induced Messrs Starostenko to enter the "Investment Agreement" in order to fund investments which would be carried out exclusively through trading facilities of UBS, UBS AG and UBS Financial Services Inc, as well as through UBS AG's electronic trading platforms with instant execution of trading orders.
29. A real estate mortgage was also a part of transactional arrangements under the Investment Agreement, and the purpose of the mortgage was strictly subordinate to and incidental to the Company's investment business with UBS.
30. In August 2012, in the course of business, UBS in conspiracy to defraud offered a loan for a period of five (5) years to the Plaintiffs for the main purpose an investment business under the Investment Agreement, a part of which was a written offer of UBS called Commitment to Finance and dated 23 August 2012 (or "Commitment to Finance") containing a term that the

50% of the loan amount would be available for exchange trading in U.S. Securities through UBS', UBS AG's and UBS Financial Services Inc's trading facilities, but actually it was an additional security for the loan in cash obtained by fraud, in violation of the provisions of bankruptcy laws and contrary to the provisions of the Fraudulent Dispositions Act, 1991.

31. On or about 28 September 2012 UBS gave a loan to the Company for a total of USD\$1,400,000 as a part of arrangements in the investment business pursuant the Investment Agreement.
32. The finance was secured against the real estate property of the Company valued at B\$2,800,000 at the time of the transaction.
33. At all material times and more particularly from June 2013 to April 2014 UBS carried or purported to carry on the trust services pursuant to both the Investment Agreement and the Statute Law of The Bahamas, the SIR, 2012 and the money on the investment account 32377 were held through UBS on trust for purposes of the investment business.
34. UBS carried out or purported to carry out sales or purchases of securities on behalf of the Company from or about 12 June 2013 to 18 September 2013 pursuant to the Investment Agreement, of which UBS failed to render substantial performance and the Plaintiffs sustained loss, as more particularly described in Claim No. 1 for breach of the Investment Agreement.
35. In the course of business, the Company had made net profit per month of USD\$30,694 in August 2013, while UBS only partially compensated the Company for loss of profits sustained due to UBS' faults in the investment business by way of two (2) compensation payments for a total of USD\$3,110, as evidenced by the relevant reports sent to Messrs Starostenko by email timed at 11:59 AM on 1 August 2013 and email timed at 5:31 PM on 4 September 2013.
36. On 18 September 2013, the Company demanded full compensation for the loss of profits in the amount of USD\$125,000 or about sustained by the Company due to UBS' faults until 18 September 2013 and UBS failed to compensate the Company in full.
37. In the response to that demand, on 19 September 2013, UBS unlawfully and in breach of its own terms and Conditions sent to the Plaintiffs a "margin call" and a "halt of trading", whilst the sum of USD\$589,362 was standing to the Company's credit in the investment account 32377, thereby wrongfully repudiating the Investment Agreement.
38. On 9 October 2013, by email timed to 11:35 and 11:41 AM, the Company proposed to pay in advance the amount of interest for the full term of the loan, i.e. upon 28 September 2017 from money in the sum of USD\$589,362 or about standing to the Company's credit in the investment account 32377; and that UBS failed to effect such payment;
39. In December 2013, Messrs Starostenko filed a complaint with UBS AG, and the latter, being a legal entity which holding 99.999975% of the issued shares in UBS and UBS AG legally appointing UBS to act as an agent on its behalf for purposes of their businesses:
  - 39.1. confirmed their involvement in the principal-agent relationship with UBS as

principal, but

39.2. failed to resolve the complaint.

40. In February 2014, UBS wrote to Messrs Starostenko that they “proceed towards exploring possible resolutions” and confirmed a meeting with Messrs Starostenko on 12 March 2014 to review the position.
41. In the same time, on 28 February 2014, UBS declared, without reasonable and probable cause, the loan in “default” and demanded repayment of the whole outstanding balance along with “breakage penalty” of USD\$140,000 or vacate up possession of the property.
42. On 7 March 2014, UBS announced in the Nassau Guardian and the Tribune that they “**winding down the banking side of its operations over the next year**” making itself:
  - 42.1. no longer a going concern; and
  - 42.2. not available to be part of the investment business under the Investment Agreement, which was the root of the relationship between the parties.
43. On 10 March 2014, UBS declared its intention to seek orders for the sale, possession or foreclosure of the property, which was and still is a dwelling house let under a tenancy since 2008.
44. On or about 11 April 2014, UBS, unlawfully:
  - 44.1. entitled itself to the right of set-off which did not exist in law, under statute or in the Investment Agreement;
  - 44.2. having no right neither under common law or statute or agreement, debited the Company’s investment account with the sum of USD\$526,323.49 standing to its credit, which was under statute and agreement a trust property held by UBS on trust; and
  - 44.3. made a wrongful usurpation of that money of the Company under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.
45. On 3 October 2014, UBS instituted a court proceedings against the Plaintiffs, committing wilful and corrupt perjury contrary to section 433 of the Penal Code of The Bahamas, which reads: “**Whoever fraudulently brings any action against another person in a false or fictitious name, having no ground for such action, is guilty of a misdemeanour**”, while certain UBS officers or agents were actuated by motives of malice or ill will towards Messrs Starostenko, and a month later, on 5 November, UBS applied for summary judgment.
46. In that common law action No. 01620 UBS (Bahamas) Ltd (In Voluntary Liquidation) (or UBS) sought possession of a residential property at Lyford Cay belonging to Junkanoo Estates Ltd (or Company) and tenanted by Messrs Starostenko since 2008, claiming that a default on a loan given for purposes of an investment business and secured by the property, was caused by the Company’s “failure”:

- 46.1. firstly, to keep at UBS a sum under management equal to 50% of the loan amount, subject to the Investment Agreement between the parties, which was:
    - 46.1.1. an additional security for the loan, a makeweight to real estate security, obtained by UBS by means of fraudulent misrepresentation, omissions, non-disclosure;
    - 46.1.2. a device through which UBS held back more than half of the loan amount, giving themselves fraudulent preference in contravention of statutory provisions conferred by bankruptcy laws; and
    - 46.1.3. a disposition made by UBS with an intent to defraud and at undervalue voidable at the instance of the Company thereby prejudiced under Section 4 of the Fraudulent Dispositions Act, 1991;
  - 46.2. secondly, to pay periodical interest under an agreement with UBS contained in a Commitment to Finance dated 23 August 2012 (or Commitment to Finance), which in fact was paid by UBS itself debiting to the Company's investment account 32377, as follows:
    - 46.2.1. from 29 September 2012 to 11 June 2013, prejudicing interests of the Company in that it sustained loss, which was wasted expenditure made useless as a result of non-performance by UBS of its contractual obligations under the Investment Agreement, which caused an inactivity on the Company's investment account and a delay in commencement of the investment business for a period of eight (8) months and (15) fifteen days, having paid an excessive amount of USD\$31,721 or so of the interest during that period of delay and inactivity;
    - 46.2.2. from 12 June to 18 September 2013, fairly;
    - 46.2.3. from 19 September 2013 to 11 April 2014, prejudicing interests of the Company in that it sustained loss, which was wasted expenditure made useless as a result of repudiatory breach by UBS of its contractual obligations under the Investment Agreement, which caused an forced inactivity on the Company's investment account for a period of eight (4) months and (22) twenty days, having paid an excessive amount of USD\$16,000 or so of the interest during that period of forced inactivity;
  - 46.3. the interest was not paid since 11 April 2014, when UBS made a wrongful usurpation of that money of the Company under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.
47. The allegations of UBS were never tested but were decided in a summary judgment proceedings by Evans J being defrauded by a fraudulent affidavit filed with and false statements made on behalf of UBS at a hearing before the Supreme Court.

48. On 23 March 2015, during an oral hearing a judgment was obtained by perjuries on the part of UBS acting in conspiracy to defraud public authority and an unless order was made for the debt claimed and for the possession of a dwelling house let under a tenancy since 2008 in the tenants', Messrs Starostenko, absence who, with good reason, were unable to attend the hearing, while no real attempt was made to present the Plaintiffs' (then Defendants) case at this hearing and the points of their defence were never tested.
49. On 9 April 2015, the Plaintiffs (the then Defendants) filed their application to set aside order of Evans J and, on 20 April 2015, they filed a notice of appeal against that order.
50. On 8 May 2015, at an oral hearing held before Evans J, the set aside application was dismissed on the ground that the Supreme Court was *functus*.
51. The matter was heard in the Court of Appeal and, on 6 June 2016, they dismissed the applications of the Defendants on the ground that the matter had been dealt with and the Court of Appeal was *functus*.
52. On 8 June 2016, the Plaintiffs (then Defendants) had applied for special leave to appeal to Her Majesty in Council from the decisions of the Court of Appeal of the Bahamas.
53. On 24 February 2017, an oral hearing was held before the Judicial Committee of the Privy Council (or Board) and a formal judgment was given in open court.
54. On 3 April 2017, the Board gave their judgment pronounced by Lord Sumption.
55. In the Board's judgment it was held, inter alia, that:
  - 55.1. ***"it is important that the basis of the Board's decision should be understood both by the parties and by the courts who may have to deal with further applications;***
  - 55.2. ***it appears not to have been appreciated that the defence which the defendants wished to raise was not just that the debt was abated by the cross-claim, which might in some circumstances have amounted to an equitable set-off, but that the event of default which was said to have made the debt payable was brought about by UBS's breaches of duty;***
  - 55.3. ***Counsel's concession*** [in reference to authorities such as *National Westminster Bank Plc v Skelton* [1993] 1 All ER 242, 246 (per Slade LJ) to the effect that a counterclaim was not normally a sufficient basis for resisting a mortgagee's summary application for possession. It appears not to have been appreciated that the defence which the defendants wished to raise was not just that the debt was abated by the cross-claim, which might in some circumstances have amounted to an equitable set-off, but that the event of default which was said to have made the debt payable was brought about by UBS's breaches of duty.] ***meant that that*** [This may or may not have been a good point] ***was never decided;*** [square brackets added] and
  - 55.4. ***the Board is satisfied that the Court of Appeal was not purporting to dismiss a substantive appeal. It is tolerably clear that what the Court of Appeal meant was***

*that they were functus in relation to the point that they had dealt with on 2 November 2015, namely that they could not make orders on an appeal which was not before them because leave to appeal had been neither sought nor obtained. That remained the position. The Court of Appeal was not of course functus in relation to the substantive appeal from Evans J's possession order, because no such appeal had been heard. Were leave to be sought from Evans J or, in the event of its being refused by him, from the Court of Appeal, neither court would be functus in relation to that application ..."*

#### PARTICULARS OF PARTIES

56. The first Plaintiff (the "party", the "Company", the "Mortgagor", the "landlord", the "Representee", the "principal") is an international business company incorporated under the laws of the Commonwealth of The Bahamas.
57. The second and third Plaintiffs (the "parties", "Messrs Starostenko", "Mr and Mrs Starostenko", the "tenants", the "guarantors", the "Representees") are officers of the Company.
58. Messrs Starostenko are private persons, individuals, sole traders, members of the investing public, retail consumers within the meaning of the SIA 2011 and the SIR 2012.
59. Messrs Starostenko were at all material times subjects to the protection which they require as retail clients, dependent in practice on UBS, UBS AG, UBS Financial Services Inc for information about the financial products, against any abuses arising from financial crime, market misconduct and other unfair and improper practices for the purposes of Parts XIII, XV and XVI of the SIA 2012.
60. Messrs Starostenko, since 2008 and at all material times, are tenants and occupiers (along with their six (6) children, whose ages range from seven (7) to eighteen (18) years old) of the property, which is a dwelling house called "Jazz House" in Lyford Cay ("the Property") within the meaning of the Conveyancing and Law of Property Act under a tenancy, which granted a term of years for their joint lives and the life of the survivor and the exclusive possession, management, and control, which enabled them to exclude strangers, and the fine for that grant was their moneys to be paid for or invested in the Property, or any other benefit in the nature of a fine.
61. The Property, by which a loan of USD\$1,400,000 was secured, is a developed land owned by the Company valued at the Fair Market Value of B\$2,800,000 as of August 2012 and revalued at the Fair Market Value of B\$3,355,000 as of 29 April 2016.
62. The value of the Property has risen very significantly and continues to rise as a result of the improvements and developments within Lyford Cay community.
63. The Defendant (the "party", "UBS", the "Mortgagee", the "Trustee", the "agent for reward", the "agent") was at all material times:
  - 63.1. a company registered under the Companies Act, 1992, (as amended), carried on business as a bank;

- 63.2. a firm authorised or purportedly authorised to deal in securities;
  - 63.3. an agent legally appointed by UBS AG for purposes of all kind of their businesses;
  - 63.4. an agent for reward of the Company in the investment business pursuant the Investment Agreement;
  - 63.5. a Trustee for the Company pursuant to the provisions conferred by the Security Industry Regulations, 2012, the Statute law of the Bahamas;
  - 63.6. a wholly-owned subsidiary of UBS AG on the facts that UBS AG was the ultimate parent of UBS as to 99,999975% of the ownership.
64. The acts alleged were committed by people who represented UBS' directing mind and will, even though the contracts were with UBS, acting in a common design to make fraudulent misrepresentations to and conspiring against the Plaintiffs.
  65. At all material times and more particularly from September 2012 UBS carried or purported to carry on the securities business of dealing in securities as the agent of UBS AG and the agent for reward of the Company at UBS House, East Bay Street, Nassau, Bahamas and abroad at Bahnhofstrasse 45, 8001 Zürich, Switzerland and at 1000 Harbor Blvd, Weehawken, NJ 07086, USA, which are the regulated activities in the Bahamas within the meaning of the Securities Industry Act, 2011 (SIA 2011) and the Securities Industry Regulations, 2012 (SIR 2012), and which constitute an integral part of any agreement between UBS and their principals, including the Company.
  66. UBS was authorised or purported to be authorised to carry on these regulated activities by reason of an undisclosed registration with the Securities Commission of the Bahamas (the "Securities Commission") for the purposes of Part VI of the SIR 2012, and UBS had to ensure orderly, fair and equitable dealings in securities for the purposes of Section 12 of the SIA 2011.
  67. In carrying on the aforesaid UBS was at all material times subject to the licensing, overseeing and other regulatory functions of the Securities Commission of the Bahamas conferred or imposed on it by securities laws or Parliament.
  68. In particular, UBS owed and still owes a legal duty in the regulated relationship of dealing in securities with the first Plaintiff for the purposes of Section 78 of the SIR 2012 "Priority of client orders", which reads: ***"(1) A registered firm shall give priority to orders for the accounts of clients of the registered firm over all other orders for the same security at the same price. (2) In this regulation "orders for the accounts of clients of the registered firm" shall not include an order for an account in which the registered firm or an officer, director or employee of the firm has an interest, direct or indirect, other than an interest in a commission or fee charged."***
  69. UBS owed and still owes a legal duty in the regulated relationship of dealing in securities with the Company for the purposes of Section 81 "Fair allocation of investment opportunities", which reads: ***"A registered firm must establish and maintain policies and procedures to ensure fairness in the allocation of investment opportunities among its clients."***

70. UBS went in voluntary liquidation in 2015 making itself unable to fulfill, in any capacity, its contractual obligations two (2) years and seven (7) months before expiration of the term of the Investment Agreement.
71. UBS, at all material times, was the agent of UBS AG and UBS Financial Services Inc in respect of the business of dealing in U.S. Securities listed on the major U.S. securities market, the New York Stock Exchange (NYSE) on and subject to their disclosures which formed contracts between UBS and their clients, including the Company.
72. A special feature of UBS' involvement in relationship with the Plaintiffs was that financial services for purposes of the investment business will be provided by UBS in accordance with a Disclosure of UBS Financial Services Inc called "important account related information" on the basis that:
- 72.1. UBS and UBS Financial Services Inc both are wholly-owned subsidiaries of UBS AG giving "access to products and services offered by the UBS Group as well as by selected third parties worldwide through our open architecture approach"; and
  - 72.2. Head of UBS' Trading Desk, Mr Kevin L Price, according to the U.S. FINRA BrokerCheck Report KEVIN LEE PRICE CRD# 2159039 Report# 66539-83561, data current as of Friday, September 04, 2015, which reads, inter alia:
    - 72.2.1. The broker previously was registered with the following firms:
      - 72.2.1.1. ***"01/2010 - 10/2014 UBS FINANCIAL SERVICES INC. CRD# 8174 WEEHAWKEN, NJ;***
      - 72.2.1.2. ***12/1994 - 08/1998 BERNARD L. MADOFF CRD# 2625 NEW YORK, NY"***; and
    - 72.2.2. an individual broker's employment history as reported by the individual broker on the most recently filed Form U4:
      - 72.2.2.1. ***"01/2010 - Present UBS FINANCIAL SERVICES INC. WEEHAWKEN, NJ***
      - 72.2.2.2. ***12/2002 - Present UBS BAHAMAS LTD. NASSAU, BAHAMAS"***

SERVICE OF CLAIM

73. This New Statement of Claim to be served on the Defendant and non-parties, including those who are likely to be a party to proceedings:

- 73.1. *Attorneys for the Defendant* - Mr Marco Turnquest and Mrs Chizelle Cargill, Lennox Paton Chambers, 3 Bayside Executive Park, West Bay Street & Blake Road, Nassau, The Bahamas;
- 73.2. *Joint voluntary liquidator of UBS* - Mr John K F Delaney QC, Delaney Partners, Lyford Manor, Lyford Cay, PO Box CB-13007, New Providence, The Bahamas;
- 73.3. *Joint voluntary liquidator of UBS* - Mr Gowon N G Bowe, Chartered Accountant, PricewaterhouseCoopers Advisory (Bahamas) Limited, 2 Bayside Executive Park, West Bay Street & Blake Road, Nassau, The Bahamas;
- 73.4. *Parent and Principal of UBS* - Mr Sergio P Ermotti, Group CEO, UBS AG, Bahnhofstrasse 45, 8001 Zürich, Postfach 8098, Switzerland;
- 73.5. *Principal of UBS* - Mr Jason Richard Chandler CRD# 2382465, CEO, UBS Financial Services Inc, 1000 & 1200 Lincoln Harbor Boulevard, Weehawken, NJ 07086, USA;
- 73.6. *Principal of UBS* - Mr Robert Brooks Karofsky CRD# 1995080, President/CEO, UBS Securities LLC, 1285 Avenue of the Americas New York, NY 10019, USA;
- 73.7. *Former Head UBS Trade Desk* - Mr Kevin Lee Price CRD# 2159039, Gonet Bank & Trust Limited, Offices at Old Fort Bay, West Bay Street, Nassau, The Bahamas;
- 73.8. *Process Server* - Mr Patrick Wright, self-employed freelancer, PO Box N4355, Nassau, The Bahamas.

#### NOTICES

74. NOTE: -

- 74.1. If UBS wishes to defend all or part of the claim herein, they must file and serve a defence, accompanied by a form for defending the claim, within fourteen (14) days after the date of service of this New Statement of Claim, unless such time is extended by the Court.
- 74.2. The Plaintiffs' service addresses for receiving documents:  
 email: irastaro@gmail.com  
 mail: PO Box N7776-440, New Providence, The Bahamas  
 hand: 5 Clifton Bay Drive, Lyford Cay, New Providence, The Bahamas

75. FURTHER NOTE: -

- 75.1. If defence (or an admission and a defence if UBS admits a part of the claims) is not filed and served a defence or if a defence is a mere denial or does not satisfy the requirements set forth in the Rules of the Supreme Court of The Bahamas for the form for defending the claim, the Plaintiffs may:
  - 75.1.1. declare that the Plaintiffs' claims against UBS for unliquidated damages
    - 75.1.1.1. are undisputed by UBS; or
    - 75.1.1.2. are not disputed in good faith by UBS; or
    - 75.1.1.3. are not genuinely disputed by UBS on some substantial ground; and, after the expiration of the period fixed by or under the Rules of the Supreme Court for service of the defence,

75.1.1.4. enter interlocutory judgment against UBS for damages to be assessed and costs, and proceed with the action against the other defendants, if any.