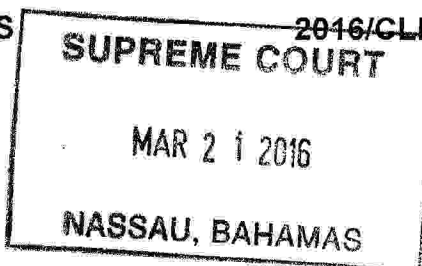


COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Common Law and Equity Division



2016/CLE/gen/00329

BETWEEN:

- (1) FREDERICK ROY SMITH Q.C.
- (2) LOUIS M. BACON
- (3) JOSEPH DARVILLE
- (4) ROMAULD FERREIRA
- (5) REVEREND C. B. MOSS

Plaintiffs

- and -

- (1) PETER NYGÅRD
- (2) KEOD SMITH

Defendants

Affidavit of Carlos Mackey.

[In opposition to an application for interlocutory injunction]

I, **Carlos Mackey** of Sea Beach Estates in the Western District of the Island of New Providence one of the Islands of the Commonwealth of the Bahamas, make oath and say that:

1. I am a TV host, businessman and a Special Project Manager for the Defendant Peter Nygård ("Nygård").

2. I make this Affidavit on behalf of Nygård and in opposition to the Plaintiffs' application for an interlocutory injunction filed herein by way of Summons dated March 9, 2016 (the "Application").
3. I depose hereto from my personal knowledge unless otherwise stated, and where otherwise stated, I set out the grounds and sources of my information, which I verily believe to be true.
4. I have read the following documents herein, filed in this Honourable Court on March 9, 2016: the Writ of Summons and Statement of Claim, the Summons for Interlocutory Injunction, the Affidavit of Martin Lundy sworn March 8, 2016 and the Affidavit of John Joseph DiPaolo ("DiPaolo Affidavit"). This lawsuit was filed against Nygård and attorney Keod Smith Court by Save The Bays Directors Joseph Darville, Romauld Ferreira, Fred Smith, Louis Bacon ("Bacon") and Rev. C.B. Moss.
5. I will not comment on the Affidavit of Martin Lundy since it does not relate to the wording of the interlocutory injunction sought, as described in the Summons.
6. I will direct my comments to the DiPaolo Affidavit which purports to support this Application and while I do not make any observations about each specific paragraph, I hereby make a general denial as to the truth and/or relevance of each to this Application.

7. The principal foundation for this Application is the Plaintiffs' reliance on the testimony of two convicted criminals whom the Plaintiffs have paid for their "hard evidence and information" as admitted in paragraph 160 of the DiPaolo Affidavit.
8. Nygård's lawyers have provided new evidence to authorities in the Bahamas which, together with evidence presented in this Application, could demonstrate that Bacon, Bahamas Senator and FNM Chairman Michael Pintard ("Pintard") and other people supporting this lawsuit are involved in a scheme to implicate Nygård and in so doing, have committed crimes. Nygård's lawyers say these crimes could include counselling to commit murder, suborning perjury, perjury, arson, attempted murder and uttering threats.
9. Accordingly, Nygård's lawyers will be formally asking Bahamian authorities to lay criminal charges against these individuals.
10. The tape recordings referred to in the DiPaolo Affidavit and submitted as evidence in this Application also prove that Nygård was not involved in a murder plot allegedly aimed at Save the Bays Director Fred Smith and Bacon or anyone else, as alleged in this lawsuit by Bacon and others. In fact, the Plaintiffs' evidence supports the conclusion that Nygård clearly and unequivocally rejected the idea of any murder plot. Further, the recordings offer no credible evidence that Nygård was involved in any other crimes or plots alleged in this action.
11. The new evidence referred to in paragraph 8 herein includes sworn statements provided to Nygård's lawyers by the two convicted criminals, Wisler "Bobo" Davilma ("Davilma") and Livingston "Toggie" Bullard ("Bullard"), who are Bacon's

key witnesses in this lawsuit and in this Application. These statements were sworn by affidavits dated March 24, 2015 and are Exhibits CM1 and CM 2, respectively.

12. In their statements Davilma and Bullard say they were told they would be paid for providing evidence to Bacon's operatives, whether true or not. They say they asked for \$3 million for their false testimony and were provided an initial payment of \$50,000 cash. Davilma and Bullard also say in their sworn statements that Bahamas Senator and FNM Chairman Pintard was present at a February 19, 2015 meeting at the Hilton Hotel, in Nassau, where the payoff was made.
13. Other evidence includes a transcript of a secretive tape recording made by Davilma and Bullard of that February 19, 2015 meeting which is Exhibit CM 3.
14. Nygård's lawyers advise that the recording was concealed under a coat and therefore is barely audible. Approximately 70% of the tape can be heard and the voices of those speaking which are indicated on the transcript were identified by Davilma and Bullard during the transcription process.
15. Nygård's lawyers have since learned that Davilma and Bullard were actually paid \$3 million and could have been paid as much as \$5 million to provide false evidence against Nygård, based upon bank records and information from confidential informants.
16. The sworn statements and tape recording given to Nygård by the two criminals help prove that allegations made in this lawsuit are fabricated.

17. The thrust of this thinly veiled publicity stunt, disguised as a lawsuit, focuses on a fictitious murder plot supposedly aimed at Fred Smith and Bacon because of their opposition through Save The Bays to development plans at Nygård Cay. The evidence presented in this Application, particularly the video recordings of Nygård and the two criminals, refute that Nygård had anything to do with such a plot or any of the other crimes alleged in the Statement of Claim.
18. Nygård's lawyers advise that the evidence presented to authorities in the sworn statements from Davilma and Bullard, who are the two primary witnesses in this lawsuit, shows that their testimony was perjured and paid for by Bacon's operatives.
19. These March 24, 2015, sworn statements were provided to Nygård under penalty of perjury after two initial meetings the previous month involving Davilma and Bullard with the operatives for Mr. Bacon. These statements are entitled "In the matter of: Attempt by Louis Bacon and His Representatives To Obtain False Evidence from Livingston Bullard Jr. and Wisler Davilma Implicating Peter John Nygård In Carrying Out Criminal Or Otherwise Illegal Activities in The Bahamas". Davilma and Bullard explained the following in their affidavits and statements attached as exhibits:
 - (a) The investigators for Bacon, who referred to themselves as retired FBI agents, agreed to pay them for providing incriminating evidence against Nygård, whether it was true or not;

- (b) They would be paid by Bacon's operatives once they provided the false evidence;
- (c) They asked Bacon's operatives for \$3 million;
- (d) They received an initial \$50,000 of Bahamian cash, in \$50s, in a Scotia Bank envelope from Bacon's investigators at the meeting on February 19, 2015 at the Hilton Hotel in Nassau, Bahamas;
- (e) Senator Pintard orchestrated the meeting at the Hilton and was in attendance when the cash exchange occurred. The first meeting with the two criminals and Pintard was held a week earlier on February 12 at the offices of former FNM Senator John Bostwick, who was in attendance;
- (f) One of the retired FBI investigators asked if the two criminals could make up names for a hit list and held up a piece of paper with two names on it while putting his finger on his lips to indicate he didn't want any discussion about it.

20. Bullard and Davilma recorded the February 19 meeting with Bacon's investigators and Pintard and provided the recording to Nygård's attorneys.

21. Soon after their initial meetings on February 12 and 19, 2015 with Bacon's private investigators and Pintard and former Senator John Bostwick, during which this group hatched their plan to entrap Nygård, Davilma and Bullard approached Nygård and told him they were asked to give false testimony against him. On March 15, 2015, Davilma and Bullard provided Nygård's Canadian

lawyers with sworn statements concerning these February 2015 meetings with Bacon's investigators and Pintard and Bostwick. Then, the March 24 affidavits were sworn in Nassau before one of Nygård's Bahamian lawyers.

22. Subsequently, the two criminals joined with Bacon and his operatives to entrap Nygård by secretly recording conversations with him and providing statements with false testimony, as disclosed by the exhibits to the DiPaolo Affidavit. Then after that, in recent months, Davilma and Bullard told Nygård that if he paid them millions of dollars they would recant the sworn statements they gave to Bacon and say they were lies. Nygård's lawyers told Davilma and Bullard that Nygård would not pay them any money, nor would Nygård participate in any fraud on the Court.
23. Despite the substantial sums Bacon and others paid Davilma and Bullard to entrap Nygård, the tapes of Nygård interacting with these convicted criminals—the supposed fruit of this entrapment—offer no evidence of wrongdoing by Nygård whatsoever and no evidence of Nygård requesting, agreeing to or in any way condoning violence aimed at Bacon or anyone else. In fact, the evidence filed last week by Bacon and Fred Smith supposedly in support of the legal proceedings actually refutes the very existence of any murder plot.
24. "I can't, I can't get into killing. I mean, I never broke the law in my life and I don't intend on starting right now." is how Nygård responded to suggestions by the two criminals that they kill Mr. Bacon, according to the transcript of a video recording

of a meeting on June 18, 2015 between Nygård and Davilma and Bullard that is an exhibit in the filing.

25. Nygård's lawyers are preparing to file a criminal complaint with authorities against Bacon, his lawyers, his investigators and the two criminals as well as others involved in this campaign to smear his reputation. Nygård's lawyers advise that any resulting charges would include counselling to commit murder, given that the two criminals, on behalf of the Bacon investigators acting on the instructions of his lawyers and Bacon, tried to get Nygård to instruct them or someone else to kill Bacon.
26. The complaint would also allege suborning perjury against Bacon and his investigators. Bacon's investigators obtained copies of the transcript and the affidavits taken in Canada and The Bahamas which were sworn by Davilma and Bullard. Therefore, they knew that the two criminals were lying to them when they took sworn statements from them about being paid by Nygård for various anti-Bacon protests and other matters. Nygård's lawyers will be moving to strike this Statement of Claim against Nygård and Keod Smith as frivolous, vexatious scandalous and prolix.
27. This lawsuit, including this Application, is yet another attempt by Bacon to destroy Nygård's reputation, drive the current PLP government, which Nygård supports, from office and get the opposing FNM party supported by Bacon elected so that Nygård is prevented from obtaining the permits he needs to rebuild Nygård Cay.

28. I make this Affidavit in good faith and in opposition to the Plaintiffs' Application for an interlocutory injunction as described in the Summons.

29. The contents of this Affidavit are correct and true to the best of my knowledge, information and belief.

SWORN AT Nassau, Bahamas)

this 21st day of March)

A.D., 2016)

Carlos Mackey
.....

Before me,

Rindsay-Allie
NOTARY PUBLIC

THIS Affidavit was filed on behalf of the 1st Defendant, Peter Nygard.

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

B E T W E E N

- (1) FREDERICK ROY SMITH, QC
- (2) LOUIS M. BACON
- (3) JOSEPH DARVILLE
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- (1) PETER NYGARD
- (2) KEOD SMITH

Defendants

Affidavit of Carlos Mackey

[In opposition to an application for interlocutory injunction]

2016/CLE/gen/No.00329

Lockhart & Co.
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NASSAU, BAHAMAS

Attorneys for the Defendants