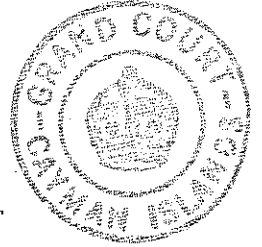


1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**

2
3 Cause No: POCL 10/2012
4 Case Numbers: 04346/2013 (1-11)
5 Ind. No: 5/2014
6

7 **IN THE MATTER OF AN APPLICATION BY THE ATTORNEY GENERAL FOR A**
8 **RESTRAINT ORDER PURSANT TO s.45 OF THE PROCEEDS OF CRIME LAW**
9 **(2008) REVISION**



10
11 **BETWEEN:**

12 'M'

13
14 **APPLICANT**

15 **AND:**

16 **THE HON. ATTORNEY GENERAL**

17
18 **RESPONDENT**

19
20 **Appearances:**

21 **Mr. Anthony Akiwumi of Stuarts Walker**
22 **Hersant Humphries, for the Applicant**

23 **Ms. Toyin Salako, Crown Counsel for the**
24 **Respondent**
25

26 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

27 **Heard:**

14th -16th January 2015

28 **Applicant's Further Authorities:**

23rd January 2015

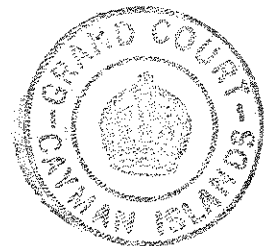
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30 **JUDGMENT**
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INTRODUCTION

1. On the 9th January 2015 the Applicant filed an *ex parte* Summons pursuant to the Proceeds of Crime Law (POCL) applying for the Restraint Order dated the 15th October 2012 to be varied, discharged or suspended on the following grounds:
 - a. That there were substantial irregularities in the Respondent's *ex parte* application for the Restraint Order on the 15th October 2012, including, but not limited to non-disclosure, misstatements and procedural irregularities;
 - b. That the Restraint Order contravenes the Applicant's fair trial rights pursuant to s.7 of the Bill of Rights of the Cayman Islands Constitution;

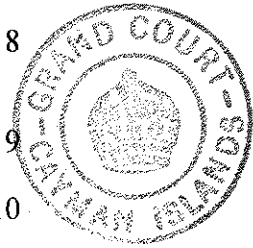
The Summons also asks the Court to make such Orders which the Court in its absolute discretion may consider appropriate and also to make an Order for costs.



1 *CHRONOLOGY OF RELEVANT PROCEEDINGS*

2 2. For the avoidance of doubt, and for the sake of clarity, it is noted that, although the
3 Summons now before the Court is filed in the Grand Court pursuant to the Proceeds
4 of Crime Law (POCL), the "Proceedings" referred to in this Chronology relate to
5 matters in:

- 6 i. The Grand Court of the Cayman Islands – POCL 10/2012;
- 7 ii. The Summary Court of the Cayman Islands – Case Numbers
8 04346/2013 (1-11);
- 9 iii. The Criminal Division of the Grand Court of the Cayman Islands –
10 Indictment 0005/2014.



11 3. 10th October 2010: The Complainant made a report to the Royal Cayman Islands
12 Police Service Financial Crime Unit (the RCIPS FCU) that the Applicant had stolen
13 money from a joint account. In a sworn statement the Complainant stated that the
14 CI\$500,000.00 had been placed in a joint US dollar account, which was a loan to
15 the Applicant on the purchase price for dilapidated apartment for the Applicant to
16 refurbish and sell. The agreement was that the Complainant would be paid back the
17 CI\$500,000.00 but the profits would go to the Applicant. The Complainant told the
18 police that the Applicant had transferred over CI\$500,000.00 from the joint account
19 to her personal account without his authorization or consent, and the Complainant
20 requested that the police investigate the matter and appropriate charges be laid.

1 4. 12th October 2012: Crown counsel Michael Snape (“Mr. Snape”) on behalf of the
2 Attorney General filed an *ex parte* Summons for a Restraint Order prohibiting the
3 disposal of assets pursuant to s.45 of the Proceeds of Crime Law (POCL). On that
4 date, Detective Constable ‘F’ swore an affidavit stating that the application is based
5 on the premise that a criminal investigation has commenced with regard to the
6 offences of theft and money laundering, and there is reasonable cause to believe
7 that the Applicant has benefitted from her criminal conduct.

8 5. 15th October 2012: The Grand Court heard the POCL application presented by
9 Crown Counsel, Mr. Snape, and read the affidavit of DC ‘F’, sworn on the 12th
10 October 2012 and made an order restraining:

11 i. Butterfield Bank (Cayman) Ltd account #02201125903 with a current
12 balance of CI\$200,549.49;

13 ii. Butterfield Bank (Cayman) Ltd account #0120125903 with a current
14 balance of US\$220,593.09;

15 iii. Monies held in the account at Scotiabank and Trust (Cayman) Ltd. in
16 the name of the Applicant;

17 iv. Monies held in accounts at RBC Dominion Private Banking in the
18 name of the Applicant;

19 v. Property located at Ocean Club, Shamrock Road – Registration Section
20 Spotts, Block 25B, Parcel 338 H66.

21 vi. Any other property held in the name of or on behalf of the Applicant.

1 The POCL Order was served on the Applicant's then attorneys.

2 6. 21st June 2013: Criminal charges were brought against the Applicant in these
3 proceedings in the Summary Court of the Cayman Islands. The Applicant was
4 charged with 8 counts of theft, 1 count of obtaining property by deception, 1 count
5 of forgery and 1 count of transferring criminal property – Summary Court Case
6 Numbers: 04326/2013 (1-11). The charges allege that the offences took place
7 between the 31st May 2010 and the 13th August 2012.

8 7. 5th July 2013: The Applicant was brought before the Summary Court and granted
9 bail. Crown Counsel Ms. Salako confirms that a full bundle of papers were served
10 on the Applicant's attorneys on the 2nd July 201, prior to the Summary Court
11 proceedings, and the only additional statement was one from a Ms. G B, dated the
12 29th May 2014.

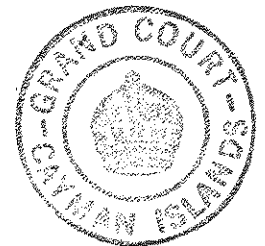
13 8. 26th November 2013: A Preliminary Inquiry hearing took place.

14 9. 18th December 2013: The Summary Court charges against the Applicant/Defendant
15 were transmitted to the Criminal Division of the Grand Court¹ for Mention on the
16 17th January 2014.

17 10. 15th January 2014: The DPP prepared and submitted Indictment 0005/2014
18 containing 10 counts of theft, 1 count of forgery, 1 count of obtaining property by
19 deception, and, 1 count of transferring criminal property.

20

¹ Indictment Number 0005/2014.



- 1 11. 17th January 2014: The Applicant, represented by her then attorneys – who had
2 been her attorneys from October 2012 – was arraigned and pleaded not guilty to all
3 12 counts on the Indictment and a trial date was set for the 4th August 2014 and a
4 Plea and Directions (PDH) hearing was set for the 25th April 2014.
- 5 12. 14th November 2014: The Applicant's then attorneys filed a Summons for an
6 application to vary the Restraint Order on the grounds that the valuation of the
7 restrained assets exceeded the amount of money which needs to be restrained in
8 order to indemnify the Complainant, should the case against the Applicant be
9 proven beyond reasonable doubt at the Grand Court criminal trial.
- 10 13. 22nd November 2014: Based on the Applicant's summons to vary the Restraint
11 Order, the Court made an Order varying the Restraint Order of the 15th October
12 2012 – restraining US\$200,000.00 and CDN\$250,000.00 – held in the account at
13 Bank of Montreal, Toronto in the name of the Applicant, as well as
14 CDN\$100,000.00 held in RBC Toronto in the name of the Applicant. As a result of
15 the submissions made on behalf of the Applicant the Court also approved a
16 direction that, for the avoidance of doubt, the Restraint Order does not prohibit the
17 Applicant from having access to funds in excess of the amounts stated.

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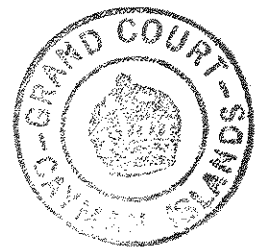


1 At some point the Applicant's then attorneys agreed with the Respondent that funds
2 from the Applicant's Ocean Club rental property in the sum of CI\$1600.00 per
3 month should be paid to the Applicant's then attorneys. It was also agreed that out
4 of the CI\$1600.00 the Applicant's attorneys would pay the strata fees for the rental
5 property and then provide the balance in the sum of approximately CI\$700.00 per
6 month to the Applicant for her living expenses. This agreement did not require any
7 further variation of the October 2012 Restraint Order.

8 14. 31st May 2013: The Crown received information from the Bank of Montreal that the
9 Applicant had CDN\$1,472,353.81 in her bank account there.

10 15. June 2014: It as revealed that the Bank of Montreal had closed the account because
11 the bank, in the absence of a Canadian Restraint Order, was not prepared to
12 continue to restrain any funds.

13 16. 25th April 2014: The Applicant applied for an adjournment of the PDH in
14 Indictment 5/2014 to allow the Applicant's leading counsel time to take further
15 instructions from the Applicant, who herself had been unwell. The Crown opposed
16 this application for the adjournment of the PDH but the Court acceded to the
17 Applicant's request to adjourn the PDH to the 23rd May 2014.



1 17. 23rd May 2014: The Applicant applied to vacate the trial date of the 4th August 2014
2 due to the Applicant's leading counsel's commitments in London. The Crown
3 opposed the Applicant's application to vacate the trial date – stating that the
4 Complainant was in his 80's and unwell. The Crown submitted that any delay
5 would be prejudicial to the Complainant and that the Applicant could instruct
6 another suitable leading counsel – with sufficient time to be prepared for the trial on
7 the 4th August 2014.

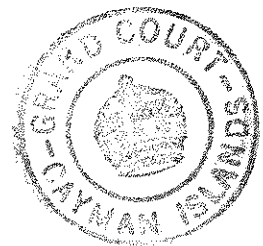
8 Despite the Respondent's objections to the Applicant's application the Court
9 acceded to the application on the basis that the 4th August 2014 was the first trial
10 date set and the Applicant should be allowed the opportunity to be represented by
11 her counsel of choosing.

12 18. 30th May 2014: The 2-week trial is now set to commence on Thursday the 15th
13 January 2015. The Applicant requested a third-party disclosure application hearing
14 for the 4th June 2014.

15 19. 4th June 2014: The court granted the Applicant's disclosure request for the
16 Complainant's will, some medical records and bank accounts relating to the
17 Complainant.

18 20. Between 4th June 2014 and the 23rd July 2014: The Applicant dismissed her
19 previous attorneys.

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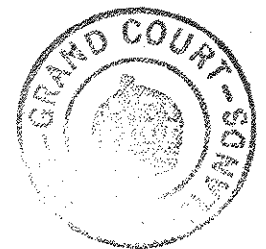


1 21. 23rd July 2014: Stuarts came on the record. The Court made it clear to defence
2 counsel that the trial was set to commence on the 15th January 2015 for 2 weeks.
3 The Respondent put the Court and the defence on notice that any further requests to
4 adjourn the trial would be vigorously opposed. The Respondent pointed out that the
5 defence had already had one adjournment to facilitate the availability of their
6 counsel and any further applications would be vigorously contested.

7 22. 5th September 2014: Discussions regarding discovery were held and defence
8 counsel gave notice of the Applicant's intention to apply to discharge the Restraint
9 Order which is currently in place in relation to the joint account.

10 23. 19th December 2014: Indictment 5/2014 was listed for the Applicant's counsel to
11 advise on his availability to commence the 2-week trial on the 15th January 2015.
12 Defence counsel confirmed that he was no longer involved in the CNB Robbery
13 and, therefore, he is able to start the trial on the 15th January 2015.

14 24. 9th January 2015: The Applicant's counsel, Mr. Akiwumi, wrote to the Court
15 advising that an application to discharge the Restraint Order of the 15th October
16 2012 would be made by the Applicant on the grounds that the Order was obtained
17 unlawfully. The Applicant's counsel said he was concerned about how the Order
18 was obtained and, accordingly, the Applicant would be making an application to set
19 aside the Restraint Order.

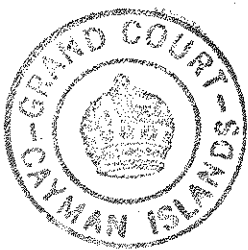


1 The Respondent emphasized the fact that the Restraint Order had been in place for
2 some time. Crown counsel made it clear that once the first trial date had been
3 vacated the Complainant would not be able to attend the trial in person.
4 Accordingly, the Crown advised that it would be making an application to have the
5 Complainant's evidence read in, pursuant to the Evidence Law. Defence counsel
6 submitted that the Applicant's assets were restrained in the Cayman Islands and in
7 Canada – to which Crown counsel responded that there was no restraint order in
8 relation to Canada.

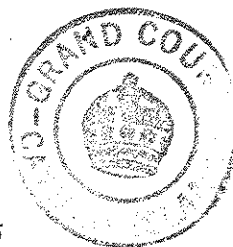
9 25. 9th January 2015: The Applicant filed her Summons to discharge the Restraint
10 Order.

11 26. 14th January 2015: The Applicant filed her First Affidavit grounding her
12 application to discharge the Restraint Order. The Applicant's evidence is that the
13 allegations are vehemently denied and Applicant further submits that they are
14 "*tawdry, speculative and utterly without foundation*". The Applicant averred in her
15 affidavit that:

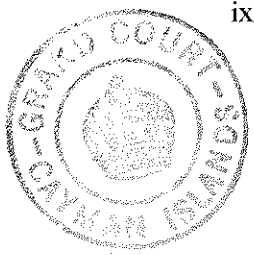
- 16 i. In March 2012 she and the Complainant became engaged.
- 17 ii. She relies on the fact that the Crown had not disclosed to the Court that
18 she was not employed by the Complainant and the Indictment is an
19 unsupported allegation which states that the Applicant was an
20 employee – a statement which the Applicant describes as an egregious
21 and material misstatement.



- 1 iii. She and Complainant were engaged in March 2012 and, as a result of
2 that, she took steps to purchase an engagement ring. The Applicant
3 avers that the Complainant never put any limit on the amount she could
4 spend on the purchase of the ring.
- 5 iv. At no time did the Complainant provide her with a loan to purchase
6 property.
- 7 v. In relation to the joint bank account, the Complainant never imposed
8 any restrictions on the funds that were placed in the joint account and
9 the joint account was not subject to a joint signature/joint approval
10 regime and she was permitted to withdraw funds from this account at
11 any time without any restriction.
- 12 vi. In May 2011 the Complainant provided her with a gift of \$500,000.00
13 and further avers “the Complainant was always generous with me.”
- 14 vii. Having reviewed the notes of the hearing made by Justice Quin, it is
15 clear that the prosecution did not draw to the Court’s attention that the
16 Applicant was engaged to the Complainant, and the prosecution did not
17 provide the Court with any details of the nature of their relationship.
18 The Applicant submits that this was in clear breach of the Respondent’s
19 duty of candour and demonstrably untrue. The Respondent asserted that
20 she was employed by the Complainant – which assertion was
21 misleading and untrue.



1 viii. She suffered extreme financial constraints. These constraints have had
2 a serious impact on her ability to properly instruct her attorneys for the
3 defence of her trial on Indictment 5/2014.



4 ix. Regarding Legal Aid: She is ineligible for legal aid by reason of her
5 assets. However, as her assets have been subjected to a Restraint Order,
6 and she is therefore without a source of funds to pay for legal
7 representation, this is a contravention of her rights under s.7 of the Bill
8 of Rights.

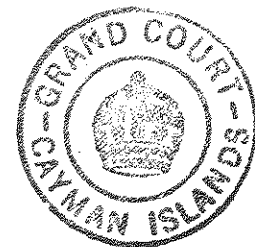
9 27. 20th January 2015: The Applicant filed a Second Affidavit disputing the written
10 submissions of the Crown, stating that she never forged the Complainant's
11 signature and, further, that the Complainant was very generous to her throughout
12 their long period of cohabitation. The Applicant exhibited along with this affidavit
13 two emails – dated the 21st July 2010 and the 3rd August 2010.

14 28. 21st January 2015; The Applicant filed a Third Affidavit referring to "*adverse and*
15 *inappropriate comments*" made by Detective Superintendent 'D' of the RCIPS at
16 the Cayman Islands Compliance Association Conference on the 6th December 2012.
17 The Applicant exhibited further documents relating to DS D's comments which
18 included the affidavit of N S who attended the Compliance Conference. Ms. Smith
19 stated that DS 'D' spoke at the conference and told all the delegates of a woman
20 acquiring a lot of jewellery, including a massive diamond ring costing over
21 \$100,000.00. Furthermore, the Applicant alleges that DS 'D' told the conference
22 that the man was in his eighties and fell in love with a younger woman and the

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woman took over his bank accounts. The Applicant avers that this is seriously prejudicial to the Applicant's case.

In her Third Affidavit the Applicant sets out her legal expenses and avers that she has approximately \$115,000.00 left in her Canadian bank account. The Applicant has entered into an arrangement with her current counsel for the defence of her criminal proceedings and avers that she has insufficient funds to retain her attorney for this application and for the forthcoming trial. In addition the Court has been told that should the Applicant receive legal aid, her current counsel will not act on her behalf.



1 *APPLICANT'S SUBMISSIONS*

2 29. The Applicant's submissions contend that the Respondent failed in its obligations
3 of candour, full and frank disclosure and good faith when it obtained the Restraint
4 Order on the 12th October 2012. The Applicant relies on the cases of *CPS v.*
5 *Eastenders Group*² and *In Re Stanford International Limited*³. Furthermore, the
6 Applicant submits that the Respondent failed to put on its "defence hat" in setting
7 out the material before the Court and alleges that the Respondent is guilty of
8 misrepresentation.

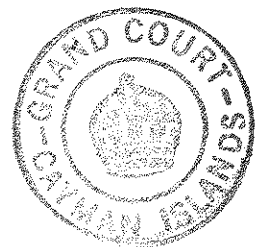
9 30. In particular the Applicant criticizes the affidavit of DC 'F' on the following basis:

10 i. He confirms that at the time of the application for the Restraint Order
11 the Complainant was yet to give a full a statement;

12 ii. At no stage in the course of his affidavit does he identify the source of
13 his knowledge, whether personal other otherwise;

14 iii. He makes reference to various actions undertaken, purportedly by
15 colleagues, yet he has no direct knowledge of these actions, and, he
16 does not particularise his source of his knowledge and his belief that
17 the information is true.

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² [2014] UK SC 26

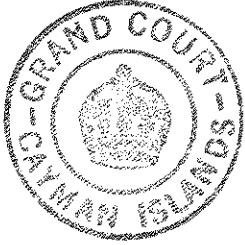
³ [2011] Ch. 33

1 iv. The DC F's affidavit does not provide the Court with the underlying
2 information without which the Court could form the view that there
3 was reasonable cause existing to conclude that the Applicant has
4 benefitted from the proceeds of criminal conduct.

5 31. The Applicant relies upon the fact that if she is unable to pay for her attorneys (to
6 defend charges against her on Indictment 5/14) her right to a fair trial – secured by
7 s.7 of the Bill of Rights of the Cayman Islands Constitution – will be breached.

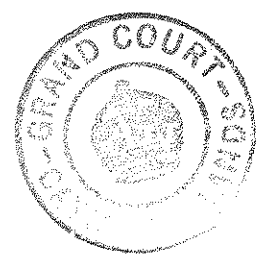
8 32. For these reasons counsel on behalf of the Applicant submits that the Restraint
9 Order – POCL 10/12, dated the 15th October 2012 – should be discharged.

10 33. In addition to her criticism of the contents of DC F's affidavit the Applicant
11 contends that the Restraint Order of the 15th October 2012 should be discharged on
12 the following grounds:



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- i. That the Respondent's assertion that the Applicant was an employee of the Complainant is incorrect;
- ii. That at the material time the Applicant was engaged to the Complainant;
- iii. That the Respondent's assertion to the Court on the 15th October 2012 that the Applicant had entered into a property purchasing agreement with the Complainant is incorrect;
- iv. That the money transferred into the Applicant's personal accounts were gifts from the Complainant and should not be the subject of the Restraint Order;
- v. That the Respondent significantly breached its obligation to provide the Court with full and frank disclosure;
- vi. That the Respondent was in clear breach of its duty of candour and mislead the Court on the 15th October 2012.



RESPONDENT'S POSITION

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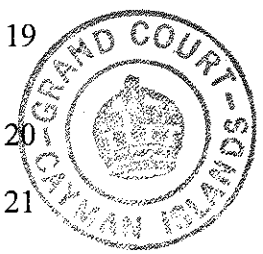
34. Crown counsel submits that the Court has no power to vary the Restraint Order in order to provide legal fees for the Applicant pursuant to s.45(4) of the Proceeds of Crime Law.

35. In addition, Crown counsel highlights the fact that Samson and McGrath came off the record for the Applicant on the 23rd June 2014. If it is being contended that all available assets have been spent on her previous attorneys, why has it taken the Applicant over six months to come before this Court with a Summons and supporting affidavit to discharge or vary the Restraint Order for the payment of legal fees.

36. Crown counsel contends that when the Applicant terminated her relationship with Samson and McGrath she must have known that she was going to have to pay for legal representation and, if she had no realizable assets, then why did she not apply for legal aid sometime in mid-2014.

37. Crown counsel on behalf of the Respondent highlights the fact that on the 10th October 2012 at 9:30 a.m. the Complainant attended the FCU where he made the following complaint:

- i. Two joint accounts had been cleared out by the Applicant;
- ii. The Applicant was the Complainant's interior designer;
- iii. The Complainant had wanted a sexual relationship with the Applicant but the relationship was purely platonic;





- 1 iv. The Applicant was added to the Complainant's account so that she
2 could take care of the administration of his condominium and
3 businesses and, in exchange, he provided her with free accommodation;
4 v. The Complainant authorised the Applicant to withdraw \$30,000.00 to
5 assist her brother who was at that time, homeless;
6 vi. There were no other authorised withdrawals.

7 38. The Complainant provided a witness statement in which, in addition to the earlier
8 information provided, he made the following averments:

- 9 i. The Applicant had stolen money from accounts held jointly;
10 ii. Since completing the decorations to the Complainant's condominium
11 the Applicant had resided there with him;
12 iii. The Applicant resided with him on the basis that she would provide
13 secretarial assistance and in return she would receive free
14 accommodation;
15 iv. The relationship was platonic;
16 v. The Applicant was added to the Complainant's Butterfield Bank KYD
17 bank account at Butterfield Bank to assist him with paying his bills;
18 vi. The Applicant was added to the Complainant's Butterfield Bank USD
19 bank account to facilitate a real estate business venture ("the
20 property");

1 vii. US\$500,000.00 was deposited into the US\$ bank account which
2 represented the loan amount and purchase price for “the property” (*ref.*
3 *vi. above*)

4 viii. The Complainant loaned the Applicant US\$500,000.00 for the purchase
5 of the property. Once the property was decorated and re-sold the
6 Complainant would be re-paid his US\$500,000.00 loan and the profit
7 could be retained by the Applicant;

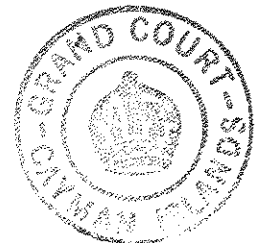
8 ix. The Applicant purchased an engagement ring;

9 x. They were never engaged;

10 xi. The transfers of money from the joint account to the Applicant’s
11 personal account were made without the Complainant’s authorization
12 or consent.

13 39. Crown counsel avers that DC F’s affidavit sworn on the 12th October 2012 was
14 served on the Court as the basis for the application to restrain assets held in the
15 Applicant’s name. Crown counsel submits that DC F’s affidavit correctly and
16 accurately sets out the nature of the investigation and the information in the
17 Respondent’s possession at that time. Accordingly, Crown counsel submits that at
18 the time of making the application the conditions for the grant of the Restraint
19 Order were met namely:

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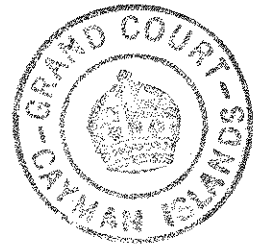
- 1 i. A criminal investigation had commenced in the Cayman Islands with
2 regards to offences of theft and money laundering;
- 3 ii. There was reasonable cause to believe that the Applicant had benefitted
4 from her criminal conduct.

5 40. Respondent's counsel deals with the complaints made by the Applicant regarding
6 the application for the Restraint Order under the following headings:

- 7 i. Employment;
- 8 ii. The relationship between the Complainant and the Applicant;
- 9 iii. The joint accounts;
- 10 iv. Property purchase agreements;
- 11 v. Purported financial gifts.

12 41. Employment: Crown counsel points out that at various times prior to her arrest on
13 the 10th October 2012 the Applicant described her relationship with the
14 Complainant in the following ways:

- 15 a. Applicant's diary entry on the 14th November 2009: "*I am living in Mr. [H's]*
16 *condo working on his project*";
- 17 b. Applicant's diary entry 24th November 2009: "*how powerless I felt being*
18 *his guest and depending on him for my livelihood as I work on his*
19 *projects to pay for my day to day expenses*";



1 c. By letter dated 28th May 2010 the Applicant set out for the Complainant
2 what her responsibilities would be;

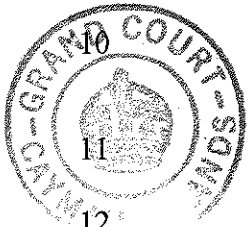
3 d. Applicant's diary entry 9th June 2010 states *"I also want to collect as*
4 *much income from Jim for all my work on the boathouse so that I have at*
5 *least one years' worth of income in savings;"*

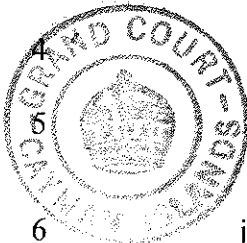
6 e. On 25th June 2010 and the 13th July 2010 the Applicant sent instructions
7 to Butterfield Bank to pay certain bills on behalf of the Complainant;

8 f. Applicant's diary entry 30th September 2010 states *"Jim wants me to*
9 *furnish his boathouse at Woods so that I get a commission from the sales*
10 *and fees;"*

11 g. By email dated 17th August 2011 the Applicant informed Butterfield
12 Bank that she now "manages" the Complainant's accounts;

13 h. Applicant's birthday entry 2011 *"I see that [S] is getting some*
14 *accountant involved with her father's accounts so my days may be*
15 *numbered if their dad's bank records go back for a long time – I am*
16 *pretty sure he will protect me from harm because I have legitimately*
17 *been working my ass off taking care of his properties and leases and*
18 *tenants and what little I have been using for myself was discussed as*
19 *needed to supplement my loss of income from OBM when I lost my*
20 *executive job with them".*





1 i. Applicant's diary entry 22nd November 2011 states "*I have come to*
2 *depend on him financing me and my lifestyle for the last 3 years and I*
3 *really enjoy putting \$ away and having some financial security of sorts*
4 *especially given that I am currently taking less money than I was 1.5*
5 *years ago;*"

6 j. Applicant's diary entry 25th February 2012 "*He agrees that I should get*
7 *paid for the work I do so we shall see how quickly that can be put into*
8 *place.*"

9 Consequently, counsel for the Respondent accepts that there was no contract of
10 employment or any work permit in respect of the work arranged between the
11 Applicant and the Complainant. However, Crown counsel contends that, based on
12 the Complainant's statement and the contents of the Applicant's diary, it is evident
13 that there was a working relationship for which the Applicant received
14 remuneration.

15 Finally on this point Crown counsel contends that this is a factual dispute that can
16 only be resolved at the trial of Indictment 5 of 2014.

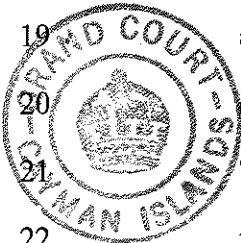
17 42. Relationship between the Complainant and the Applicant: It is clear that there was
18 yet another conflict on this issue as the Applicant maintains that she and the
19 Complainant were engaged, while the Complainant states that they were never
20 engaged. In any event, Crown counsel contends that the status of the relationship
21 has no bearing on the application made to vary or discharge the Restraint Order and
22 is, again, a matter which the Applicant can raise at her trial.

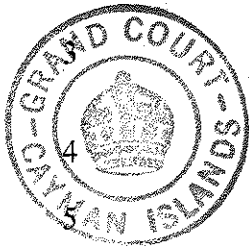
1 There is a further dispute regarding an engagement ring. It is the Respondent's case
2 that the engagement ring was purchased fraudulently and it is the Applicant's case
3 that it followed on from an engagement. Crown counsel contends that this conflict
4 does not, in any way, affect the legality of the Restraint Order.

5 43. The Joint Accounts: In response to the Applicant's allegation that the Respondent
6 deliberately failed to disclose to the Court material facts, Crown counsel states that
7 DC F's affidavit clearly sets out that the Applicant and the Complainant held two
8 joint accounts and it addresses the purpose for which those joint accounts were
9 opened.

10 44. Property Purchase Agreement: Information on this came from a statement provided
11 by the Complainant and it is referred to in DC F's affidavit. Indeed, the Applicant
12 herself in her diary entry for the 8th May 2011 corroborates the fact that she had
13 asked the Complainant to loan her US\$500,000.00 for a mortgage to purchase the
14 property.

15 45. Purported Financial Gifts: Crown counsel refers to the fact that between the 27th
16 May 2011 and the 1st October 2012 the Applicant transferred US\$1,878,285.97
17 from the joint accounts held with the Complainant to her personal account. Crown
18 counsel states that there is no dispute that the source of the funds held in these
19 accounts came from the Complainant. Crown counsel submits that the Complainant
20 did not authorise the transfer of these funds to the Applicant's personal account.
21 The Complainant stated that there was only one occasion when he authorised the
22 transfer of money to the Applicant's personal account and that was for the sum of
23 US\$30,000.00 to assist the Applicant's brother. This authorization as specially





1 provided in writing to Butterfield Bank and Crown counsel on behalf of the
2 Respondent submits that it is noteworthy that no other written authorization was
given.

4 Crown counsel states that whether the Complainant gave the Applicant
US\$1,878,285.97 or whether the Applicant stole these funds is a matter for the
6 Court at trial.

7 46. Special Burden: Crown counsel confirms that the responsibilities on the
8 Respondent when it applied for the Restraint Order are well known and the
9 Respondent contends that it has not acted improperly in any way. Furthermore,
10 Crown counsel contends that the absence of a note on behalf of the Respondent
11 does not negate the Respondent's application for the Restraint Order. The
12 application was grounded by the affidavit of DC F and it was placed before the
13 Court with full input from Crown counsel Mr. Snape.

14 47. In conclusion Crown counsel submits that the papers supporting the case against the
15 Applicant (for the charges on the Indictment) were served on her attorneys as far
16 back as the 2nd July 2013. From October 2012 up to June 2014 the Applicant was
17 represented by leading counsel and an experienced Cayman attorney. At no time
18 has it ever been suggested that the Respondent acted improperly during these
19 proceedings (in relation to Indictment 5/14) or failed to bring to the attention of the
20 Court any material facts. Consequently, the Respondent contends that the Restraint
21 Order was properly made and granted and should remain in place until the
22 conclusion of the proceedings in Indictment 0005/2014.

23

1 *ANALYSIS AND CONCLUSION*

2
3 48. Section 44(1) of the POCL (2008 Revision) reads:

4 “44. (1) *The court may grant a restraint order in accordance with section 45 if*
5 *any one of the following conditions is satisfied –*

6 (a) *a criminal investigation has been started in the Islands with*
7 *regard to an offence and there is reasonable cause to believe*
8 *that the alleged offender has benefited from his criminal*
9 *conduct;”*

10 ;
11 49. Section 45(1) of the POCL reads:

12 “45. (1) *Where any of the conditions set out in section 44 is satisfied the*
13 *court may make a restraint order prohibiting any specified*
14 *person from dealing with any realisable property held by him*
15 *subject to such conditions and exceptions as may be specified*
16 *in the order.”*

17
18 50. It has not been challenged that the Applicant was interviewed by the RCIPS FCU
19 on the 10th October 2012. It is trite law to state that the Applicant had a right to
20 remain silent, but it is interesting to note that the following questions were asked of
21 her at that time:

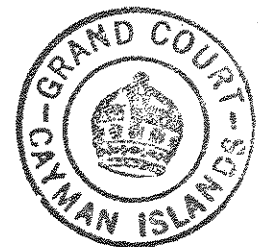
22 i. Were you authorised and did you receive consent for large transfers to
23 your account?

24 ii. What relationship are you in with Mr. H?

25 iii. I take it [that] it is not a sexual relationship?

26 iv. Have you ever been given money by Mr. H?

27 v. Have you stolen any money from Mr. H?

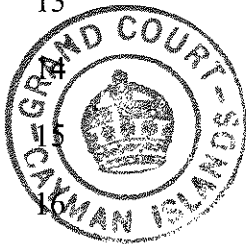


1 vi. Mr. H alleges that you have stolen money from him [how do you
2 respond?]

3 51. It is accepted that the Applicant had received legal advice before this interview and
4 it would appear that she gave no-comment answers to the aforesaid questions.

5 52. I have some sympathy with the Respondent in that, having been accused of failing
6 to give full and frank information to the Court about the relationship between the
7 Complainant and the Applicant it would be difficult for the Respondent to provide
8 the Court with the Applicant's view of these issues when she did not provide any
9 answers to the aforesaid relevant questions.

10 53. The Applicant submits that pursuant to the dicta of Hughes LJ *In Re Stanford*
11 *International Bank Ltd*⁴ that during the Respondent's *ex-parte* application for the
12 Restraint Order heard on the 15th October 2012 Crown counsel failed to put on his
13 "defence hat." In essence the Applicant's complaint is that Mr. Snape should have
14 presented any facts he thought the Applicant would have liked to present to the
15 Court and any submissions the Applicant might have in answer to the *ex-parte*
16 application.



17 54. Again, it was difficult, if not impossible, for Crown counsel, Mr. Snape to "put his
18 defence hat on" and present what the Applicant would have liked the Court to
19 consider in answer to the Complainant's allegations of theft when she had not
20 provided any evidence and had answered even the most reasonable of questions
21 with "no comment" answers.

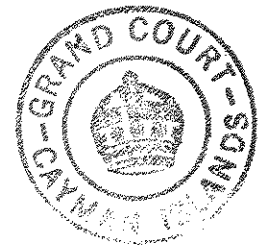
⁴ (Ch 33)

1 55. The Applicant complains that the Respondent treated the *ex-parte* application as
2 routine and that is demonstrated by the fact that the Respondent provided no written
3 submissions to the Court, nor did the Respondent make any notes of the application.
4 Whilst it would have been preferable for Crown counsel Mr. Snape to have
5 provided written submissions on behalf of the Respondent and to have provided the
6 Applicant and her counsel with a written note of the POCL proceedings, such
7 submissions and note are not as important as the affidavit evidence put before the
8 Court by the Respondent. Furthermore, the absence of any written submissions or
9 written note of the *ex-parte* application does not render the Restraint Order invalid.

10 56. The Applicant also contends that DC F's affidavit breaches various provisions of
11 GCR O.41 and specifically refers to GCR O.41 r.5 which reads:

12 *"An affidavit sworn for the purpose of being used in interlocutory proceedings*
13 *may contain statements of information or belief with the sources and grounds*
14 *thereof."*

15
16 GCR O.41 r.5 does not mandate any strict requirement in relation to statements of
17 information or belief. The contents of DC F's affidavit are taken from the results of
18 his investigations, his enquiries of the Complainant and the staff at the Bank, and,
19 the forensic examination of the Applicant's computer. Whilst the standard words of
20 *"I am informed and do verily believe"* are missing, the sources and grounds from
21 which DC F obtained his evidence are set out in his affidavit and, accordingly, I can
22 find no breach of GCR O.41 r.5.



1 57. The Applicant is now contending that she received monies in excess of one million
2 dollars as a gift from the Complainant, whilst the Complainant contends that the
3 Applicant stole these monies from him. The Complainant's allegation of theft of
4 these monies is clearly the subject of the Indictment and the Applicant will have a
5 full opportunity to test the Crown's case and provide evidence to contradict these
6 allegations to the Court at that time.

7 58. The Court now has to take itself back to the 12th October 2012 and review the
8 sworn evidence placed in front of it by the Respondent in light of the facts and
9 circumstances existing at that time.

10 59. DC F in his affidavit averred that he had made enquiries. It was clear that his
11 information came from the Complainant as set out in paragraphs 5 – 12 of his
12 affidavit. DC F was frank in disclosing that the Complainant is yet to give a full
13 statement but as at the 12th October 2012 the Complainant accused the Applicant of
14 transferring funds out of the joint account(s) which he had not authorised and which
15 he considered to be theft.

16

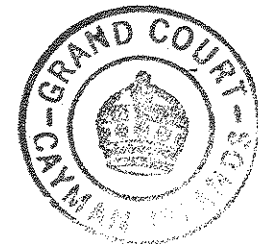
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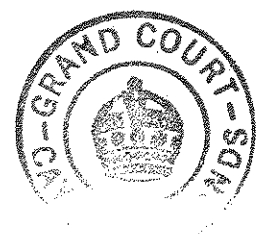
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1 60. The Applicant has not challenged the transfers of money set out in paragraphs 20 to
2 22 of DC F's affidavit. Paragraph 20 discloses that the Applicant transferred
3 \$625,000.00 from account #02101137605 to her personal accounts from the 16th
4 April 2012 to the 6th September 2012. Furthermore DC F said that the investigation
5 revealed that from the 19th June 2012 to the 1st October 2012 the Applicant
6 transferred a further sum of US\$282,557.60 from the joint account #02101123318
7 to her personal accounts. Of particular significance is that in the days just prior to
8 the Respondent's application, that is, from the 27th September 2012 to the 4th
9 October 2012, the Applicant wire transferred US\$300,000.00 and CDN\$350,000.00
10 out of this jurisdiction, to her accounts in banks in Canada.

11 61. Furthermore it is also significant that on the day the Applicant was arrested – the
12 10th October 2012 – she purchased two drafts in the sum of \$50,000.00 each and
13 also attempted to wire-transfer another \$200,000.00 to Canada. DC F's evidence in
14 this regard is not challenged and it does, to some extent, corroborate the
15 Complainant's account.

16 62. I have carefully reviewed the sworn evidence which supported the Respondent's *ex*
17 *parte* application on the 15th October 2012 and I can find no basis for the
18 Applicant's averment that it is "*tawdry, speculative and utterly without*
19 *foundation.*"

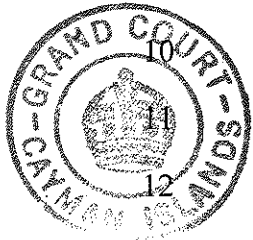


1 63. In order to make a Restraint Order pursuant to the POCL the Court has to be
2 satisfied, first, that a criminal investigation has commenced within the Cayman
3 Islands with regard to an offence and, secondly, that there is reasonable cause to
4 believe that the subject of the Restraint Order has benefitted from the alleged
5 criminal conduct.

6 64. On the 15th October 2012 I was satisfied that the Respondent had met this threshold.
7 I am satisfied today that the Respondent has still met the threshold. A criminal
8 investigation had commenced within the Cayman Islands with regards to an alleged
9 theft and there was reasonable cause to believe that the Applicant had benefitted
10 from the alleged theft. In light of the information that both Crown counsel and DC
11 F had on the 15th October 2012 I can find no evidence to support the allegation that
12 any material fact was misleading. Additionally, I cannot find any evidence to
13 support the Applicant's contention that there was material nondisclosure by the
14 Respondent on the 15th October 2012.

15 65. Given the Applicant's no-comment responses to all the questions put to her, it
16 would be difficult for DC F or Crown counsel Mr. Snape to have provided the
17 Court with the Defence case. There is no suggestion that the figures DC F produced
18 were wrong or inaccurate and, furthermore, the bank statements, which are relied
19 upon by DC F, are not challenged by the Applicant.

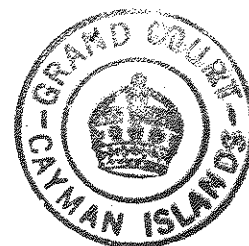
20 66. On the 23rd January 2015, the Applicant's attorneys filed three more English cases
21 which dealt with the Respondent's duty of candour in *ex-parte* applications and
22 provided a further summary of the principles and safeguards when the Court is
23 asked to make an *ex-parte* restraint order.



1 67. I find that there have been no breaches of the Respondent's duty to provide full and
2 frank disclosure to the Court and to "wear the Defence hat". The Court had DC F's
3 affidavit before it and my notes made of the Respondent's Application on the 15th
4 October 2012 refer to DC F's affidavit averring to the offences of theft contrary to
5 s.241 of the Penal Code and Money Laundering contrary to s.133 of the POCL.
6 After the Court reviewed all the evidence contained in DC F's affidavit it found, as
7 the notes made at the time confirm, that there was *prima facie* evidence of theft.
8 Furthermore DC F's affidavit presented the Court with evidence that the
9 Complainant did not authorise, did not have knowledge of and did not give his
10 consent for the transfers set out in DC F's affidavit. The details of the transfers of
11 monies to the Applicant's bank accounts have not been challenged. I can find no
12 evidence to support the allegation that the Respondent behaved improperly or failed
13 to provide full and frank disclosure of any material facts as matters stood on the 15th
14 October 2012. Accordingly, the Restraint Order was properly granted and I order
15 that it will be continued.

16 68. I can find no substantial irregularities in the Respondent's *ex parte* application, and,
17 accordingly, I reject the Applicant's Summons dated the 9th January 2015 to vary,
18 discharge or suspend the restraint order of the 15th October 2012.

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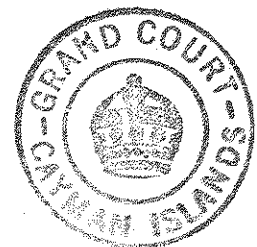
1 **THE VARIATION OF THE RESTRAINT ORDER FOR THE PURPOSES OF LEGAL FEES**
2 **AND THE SUBMISSION THAT THE RESTRAINT ORDER CONTRAVENES S.7 OF THE**
3 **BILL OF RIGHTS**

4
5 69. The same argument regarding legal fees was made in the case of *DIO and RV5*
6 *Trust Limited v. R*⁵ and the holding states:

7 *“By virtue of s.45(4) of the POCL (2008 Revision) the Court did not have*
8 *power to vary a restraint Order to release funds to cover legal expenses in*
9 *relation to the offences in respect of which the Order has been made. Given*
10 *that the Applicant did not qualify for legal aid on the basis of the significant*
11 *assets in their names, and also that, unlike in the United Kingdom, there was no*
12 *provision for them to obtain other public funding, this would mean that they*
13 *would not have legal representation at their trial. This was likely to be in*
14 *breach of their right to a fair trial under article 6(1) of the European*
15 *Convention on Human Rights (ECHR).”*

16
17 70. *Dio* was decided on the 20th April 2010. Since that date the Cayman Islands
18 Constitution Order 2009 has been passed and s.7(1) of the Bill of Rights mirrors the
19 wording of article 6(1) of the ECHR and reads:

20 *“Everyone has a right to a fair and public hearing in the determination of his*
21 *or her legal rights and obligations by an independent and impartial court*
22 *within a reasonable time.”*



⁵ [2010] (1) CILR 339

1 71. And s.7(2)(d) reads:

2 “7. (1) *Everyone has the right to a fair and public hearing in the*
3 *determination of his or her legal rights and obligations by*
4 *an independent and impartial court within a reasonable*
5 *time.*

6 (2) *Everyone charged with a criminal offence has the*
7 *following minimum rights –*

8 (a) ...;

9 (b) ...;

10 (c) ...;

11 (d) *to defend himself or herself in person or*
12 *through legal assistance of his or her own*
13 *choosing or, if he or she has not sufficient*
14 *means to pay for legal assistance and the*
15 *interests of justice so require, through a*
16 *legal representative at public expense*
17 *provided through an established public*
18 *legal aid scheme as prescribed by law;*

19 (e) ...;

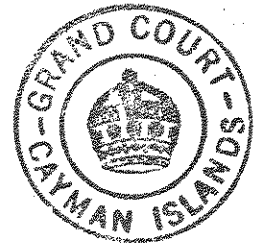
20 (f) ...;

21”

22
23 72. Paragraph 13 in *Dio* stated in relation to public funding for legal representation:

24 “*It is this court’s opinion that the question of public funding for legal*
25 *representation in cases of this nature should be considered as a matter of some*
26 *urgency. If the current position is not addressed it will almost inevitably result*
27 *in breaches of (then the ECHR now own Bill of Rights) with the consequence of*
28 *increasing costs which the resolution of such concern generates at the expense*
29 *of the public purse. The ultimate result will be delay and added expense in the*
30 *administration of justice with the attended risks of miscarriages of justice.”*

31
32 What was stated in April 2010 was true and urgent at that time and it is even more
33 urgent today.



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REMARKS MADE ON THE 6TH DECEMBER 2012 AT COMPLIANCE CONFERENCE

73. The Applicant complains about the detailed comments of DS D allegedly made at a Compliance Conference in a local hotel on the 6th December 2012 and submits that the said comments are very prejudicial to the client's case. In the circumstances the remarks attributed to DS D whilst investigations were ongoing were unwise and unfortunate. However, they are not relevant to the Applicant's application to discharge the Restraint Order dated the 15th October 2012.

APPLICANT'S PRESENT FINANCIAL POSITION

74. The Court has not received any up to date information in relation to the Applicant's property at Ocean Club which provides a monthly income of CI\$1,600.00 for strata fees and the Applicant's reasonable living expenses. The Applicant's Third Affidavit reveals that she still has significant funds and has never applied for legal aid. Accordingly it is premature for this Court to make any finding as to whether s.7 of the Bill of Rights has been breached.

75. However, the Applicant's evidence discloses that, in her view, she has insufficient funds to pay for her current counsel to appear in this application and for her counsel to appear in the forthcoming criminal trial. Furthermore, her counsel has stated that he would not appear on her behalf if she is forced to resort to legal aid. This is an unfortunate and regrettable state of affairs.



1 76. All the adjournments of the PDH and the trial dates have been at the behest of the
2 Applicant and, in light of the Complainant's elderly status and ill-health the
3 Respondent, quite properly, is anxious to proceed with the trial as soon as possible.

4 77. It is very important that there should be no further delay in the forthcoming trial of
5 Indictment 5/14. Accordingly, I urge both counsel to use their best endeavours to
6 ensure that the trial begins as soon as reasonably practicable.

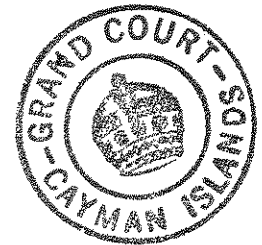
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11 Dated this the 27th January 2015



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13 Honourable Mr. Justice Charles Quin Q.C.
14 Judge of the Grand Court

15