

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV16 / 2003

**IN THE MATTER OF AN APPLICATION FOR A RESTRAINT ORDER PURSUANT TO
SECTION 26 OF THE PROCEEDS OF CRIME AND MONEY LAUNDERING
(PREVENTION) ACT NO. 39 OF 2001**

BETWEEN:

**1. CLIFFORD PITT
2. ARGON LTD.
3. DIAK BANK LTD.**

Applicant

and

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Appearances:

Mr. Joseph Delves and Mr. Joel Pitt for the applicants.
Mr. Colin Williams for the respondent.

2003: July 21, 24.

IN CHAMBERS

JUDGMENT

ALLEYNE J.

[1] On the 22nd of May the Director of Public Prosecutions, acting through Sergeant of Police Clouston Francis, Financial Investigator of the Financial Intelligence Unit of the Royal St. Vincent and the Grenadines Police Force and represented by Mrs. Sharda Bollers of counsel, on an application without notice, obtained a restraint order prohibiting the applicants from dealing with all realizable property/assets

owned or controlled by them, whether in their names or not, whether solely or jointly owned, and whether or not located in or out of St. Vincent and the Grenadines. The order prohibited them from removing from St. Vincent and the Grenadines or in any way disposing of, dealing with or diminishing the value of the said property or assets. The order provided certain exceptions, in particular an allowance for living expenses for Clifford Pitt of \$3000.00 monthly, and of \$2000.00 for legal expenses.

- [2] By Notice of Application dated July 3rd, the applicants applied for an order discharging, or in the alternative varying, the restraint order. The application was supported by an affidavit of Clifford Pitt, to which was exhibited a number of exhibits.
- [3] Mr. Delves, counsel for the applicants filed and spoke to his extensive and useful skeleton submissions. Counsel first directed attention to certain areas of non-compliance with the **Civil Procedure Rules 2000**, Rule 30.2(d) in relation to the affidavit filed in support of the application made without notice, and referred to the case of **Matilda Antoine v Claude Theobalds & Ken Joseph**, suit No. 0103 of 2003, a decision of this court delivered on June 6, 2003. There is merit in counsel's submissions on this procedural issue. However, by itself it might not be sufficient to justify discharging the order. I think it unnecessary to address other criticisms of the affidavit filed in support of the application without notice, valid though some of them may be.
- [4] The first substantive ground argued by counsel was directed towards the very foundation of the order. The grounds of the respondent's application without notice, and the grounds on which the impugned order was made by the court, were
- (i) that Clifford Pitt is to be charged with a relevant offence, namely a banking offence; and

- (ii) that there are reasonable grounds for believing that Clifford Pitt has benefited from the above named relevant offence.

[5] Learned counsel referred to section 25 of the **Proceeds of Crime and Money Laundering (Prevention) Act, No. 39 of 2001** under which section the court was moved by the respondent. The section reads so far as relevant;

25. (1) The powers conferred on the court by section 26 to make a restraint order ... are exercisable where

- (a) proceedings have been instituted against the defendant for a drug trafficking or relevant offence ...
- (b) the proceedings have not ... been concluded
- (c) the court is satisfied that there is reasonable cause to believe ... (ii) ... that the defendant has benefited from drug trafficking or from any relevant offence (as the case may be).

(3) Those powers are also exercisable where the court is satisfied-

- (a) that a person is to be charged with a drug trafficking or relevant offence or an application as mentioned in subsection (1)(a) is to be made; and
- (b) the court is satisfied as mentioned in subsection (1)(c)

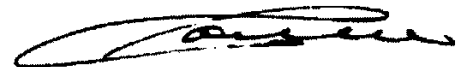
(4) Where the court has made a restraint or charging order by virtue of subsection (3), the court shall discharge the order if proceedings in respect of the offence are not instituted, or if the application is not made, within such time as the court considers reasonable.

[6] Mr. Pitt has not been charged with, nor is there any indication that he *will* be charged with a drug trafficking offence. "Relevant offence" is defined in section 2

of the Act as meaning any indictable offence or an offence triable both summarily or on indictment from which a person has benefited, other than a drug trafficking offence.

- [7] Sergeant Francis' affidavit leading the order alleges that Mr. Pitt is being investigated in connection with an alleged contravention of section 3(1) of the **International Banks Act No. 19 of 1996**. Subsection (2) of that section provide for such offences to be tried summarily. An offence under that section is therefore not a "relevant offence" as contemplated by section 25 of the **Proceeds of Crime and Money Laundering (Prevention) Act**. Indeed section 23 of the **International Banks Act**, which is the general offences section, makes all offences under the Act triable summarily and therefore excludes all such offences from the purview of section 25 of the **Proceeds of Crime Act**. In so far as the order was made in relation to that ground, the order must therefore be discharged.
- [8] Paragraphs 4 and 5 of Sergeant Francis' affidavit make reference to suspected criminal connections between the applicants and certain parties in the United States of America. Counsel for the respondent submits that these allegations are sufficient to bring the matter within the provisions of section 25(1)(c)(ii). Under that provision the court must be satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking or from a relevant offence. Clearly, in the present case there is no suggestion of benefit from drug trafficking. The allegation relates to aiding and abetting securities fraud and money laundering. The Director of Public Prosecutions is under a burden to satisfy the court with evidence that there is reasonable cause to believe that Mr. Pitt has benefited from a relevant offence, in this case securities fraud and money laundering. It is not sufficient that he is suspected of involvement in those crimes. There must be reasonable grounds for believing that he has benefited from these crimes. Paragraphs 4 and 5 of the affidavit do not discharge that burden, light as it is. The order cannot be sustained on that ground.

- [9] On the ground that the alleged banking offence is not a relevant offence, and on the further ground that the burden of establishing reasonable grounds for believing that Mr. Pitt benefited from a relevant offence has not been discharged, I am of the view that the restraint order must be discharged, and I so order.
- [10] I agree with learned counsel for the applicants that a restraint order under the Act is of the same character as a *mareva* injunction, and the rules that apply to such injunctions, specifically the rules under Part 17.4 of the **Civil Procedure Rules 2000**, applies to such orders to the same extent as they apply to other orders which fall within that Part, and indeed such orders are specifically referred to in rule 17.4(1)(e), i.e. an order under rule 17.1(1)(h)(ii).
- [11] Learned counsel raised issues of non-disclosure, which I think it unnecessary to decide in light of my findings and order, except to observe that the duty of full disclosure applies equally to applications under this Act as to other applications.
- [12] The applicants are entitled to their costs of this application, which I fix at \$5000.00.



Brian G.K. Alleyne
High Court Judge