GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.20 OF 2002

BETWEEN:

ATTORNEY GENERAL OF GRENADA

Appellant

and

SALISBURY MERCHANT BANK LIMITED

Respondent

Before:

The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Ephraim Georges	Justice of Appeal [Ag.]
The Hon. Mr. Denys Barrow, SC	Justice of Appeal [Ag.]

Appearances:

Mr. Hugh Wildman for the Appellant
Mr. Carol Bristol, QC; Ms. Karen Samuel with him for the Respondent

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2003: March 13;
2004: January 26.

JUDGMENT

[1] BARROW, J.A. [AG.]: The Director of the Serious Fraud Office in London sent a Letter of Request to the Attorney General of Grenada seeking assistance with a criminal investigation into the activities of the respondent companies which was being conducted in England by the Serious Fraud Office (SFO). In providing the requested assistance the police presented the Letter to a magistrate, swore to complaints before him and applied for the issue of search warrants. The magistrate issued search warrants by virtue of which the police seized records and equipment in the possession of three of the companies.

[2] The companies claimed a declaration in the High Court that the government had acted in violation of the companies' constitutional rights under sections 6 and 7 of the Constitution which provide protection from deprivation of property and protection from arbitrary search or entry. Benjamin J held that the warrants were invalid and granted the declaration and an injunction. The learned Judge identified three grounds of invalidity: (1) the magistrate did not have reasonable grounds to issue the warrants, (2) the warrants did not state the purpose for which they were issued and (3) the warrants did not state the nature of the offence for which they were issued. The government challenges each of these grounds by way of appeal and they will be examined in turn.

Reasonable Grounds for Issuing Warrant

[3] The Judge found that the warrants were issued under s. 25 of the Proceeds of Crime Act (PCA) to investigate the alleged offence of money laundering in Grenada but the Letter of Request, he found, did not reveal any evidence of money laundering in Grenada. The magistrate could therefore not have been satisfied that there were reasonable grounds for issuing the said warrants, the judge found, and s. 26 of the PCA is clear that a magistrate shall not issue a warrant unless he is so satisfied.

[4] The learned Judge rejected the argument that the Letter of Request provided the magistrate with adequate evidence of money laundering in Grenada. The relevant pages, he found, revealed only that some of the companies had had funds transferred as between themselves and that at least one of them was known to hold an account in Grenada but that was not evidence of money laundering under local law. The government challenges that finding and it is therefore necessary to examine the Letter.

The Letter of Request

[5] The Letter stated that the SFO and Metropolitan Police Service were carrying out an investigation into suspected frauds relating to investment in wine and/or "penny shares" and money laundering on an international basis. The sale of shares and money laundering were believed to be continuing at the time of writing, the Letter stated, and multi-million pounds potential loss to investors was envisaged. The English authorities were proposing to carry out search operations at various addresses in England and Wales and authorities in Spain had been contacted with a view to a similar operation being conducted there. Grenada was being asked to undertake a similar operation.

[6] According to the Letter there was reasonable cause to believe that named individuals had committed one or more of a number of criminal offences, namely: Obtaining a Money Transfer by Deception, Trading for a Fraudulent Purpose, Conspiracy to Defraud contrary to the common law and Money Laundering. The various English statutory provisions establishing the offences and/or penalties were identified and stated to provide maximum penalties ranging from seven to fourteen years imprisonment.

[7] The Letter summarized the facts on which the suspicion of fraud and money laundering by the companies was based. Certain companies, not including any of the respondent companies, were said fraudulently to have induced investors to invest in dramatically overpriced wine with no hope of a substantial profit. Other companies, including the respondent companies, were said to have been offering overvalued shares. Each company was said to be a subsidiary of Salisbury Merchant Bank (SMB), namely Stanley Reibeck Corporation (SRC), Webster Cohen Golumbik (WCG) and Hopkins Pierce Limited (HPL). The Letter described how the marketing to members of the public was done so as to induce them to

invest in overseas and hence unregulated companies, which enabled the marketers to conceal material adverse information from the investors.

Connection with Grenada

[8] The Letter stated that large scale international movements of monies had taken place. 'These movements represent the removal etc of the proceeds of frauds committed against UK residents and … constitute large-scale money laundering' the Letter stated. SMB was said to hold a Liechtenstein bank account to which SRC was said to have transferred at least £215,000. ICM Limited was known to hold at least one account with a named bank in Grenada, the Letter stated, whilst SRC held at least one account with another named bank, presumably also in Grenada. It was also stated that '… WCG is known to have transferred at least £190,000 to SMB (presumably to a Grenadian account). SRC is known to have transferred at least £5,000 directly to Grenada, which transfer was marked to its own Grenadian account.'

Money Laundering Under Local Law

[9] A central feature of money laundering is its international character. This has been the bane of law enforcement agencies across the world and domestic legislation derived from international models has been developed in many countries to deal with the transnational nature of the crime. Grenada's Money Laundering (Prevention) Act (MLPA) is derived from the international model. Section 2 defines "money laundering" to include engaging in a transaction that involves property that is the proceeds of crime or receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Grenada any property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime. Money laundering in Grenada is punishable with imprisonment for twenty-seven (27) years.

[10] The international aspect is directly addressed by the definition of "Proceeds of crime" which is stated to include property derived from the commission of an act that (a) occurred outside Grenada and (b) would, if it had occurred in Grenada, have constituted an offence which is punishable with imprisonment for a term of five years or any greater punishment. For convenience I refer to such an act as 'foreign crime'. The effect is that even if a foreign crime has taken place exclusively abroad once there is, from within Grenada, engagement in a transaction that involves the proceeds of foreign crime or, from within Grenada, those proceeds are managed, received, possessed, invested, concealed, disguised, disposed of or brought into Grenada that constitutes the offence of money laundering under Grenada law.

[11] In this case the Letter alleges the commission by the companies of foreign crimes, including foreign money laundering. If there was any dealing by the companies, from within Grenada, in the way defined, with the proceeds of the foreign crime of money laundering that dealing would itself constitute the local crime of money laundering, under Grenada law.

[12] The companies are all incorporated in Grenada, are all related by having a common creator and shareholder and three of the companies are subsidiaries of a fourth. SMB, SRC and ICM each maintained offices in Grenada and it is these premises that were searched. It would be reasonable for the police to suspect that they operated and dealt with the alleged proceeds of crime from within Grenada.

[13] The finding of the Judge was that the Letter revealed that some of the companies had transferred funds as between themselves. Those funds, one would think, were reasonably open to suspicion of being the proceeds of the alleged foreign crimes described in the Letter, including the foreign crime of money laundering. The act of transferring funds amounted to engaging in a transaction that involved the proceeds of foreign crime or receiving, possessing, managing, disposing or bringing into Grenada such proceeds. That is money laundering under local law.

That was enough to satisfy the magistrate that there were reasonable grounds for issuing the warrants to search for property used in the commission of the local offence of money laundering. I find that the warrants should not have been held to be invalid on this ground.

Warrant must state purpose

[14] The learned Judge found that the warrants did not contain a specific statement of the purpose for which they were issued, as required by s. 27 of the PCA. It is not clear whether the decision of the learned Judge that the warrants were invalid was influenced by this finding. He did not appear to put much weight on this point and indeed referred to portions of the warrants that he seemed to accept as stating the purpose for which the warrants were issued.

[15] In passing, I would observe that the warrants distinctly identify the stated items and expressly state that there are reasonable grounds for suspecting that they are tainted property, that they have been used in the commission of money laundering offences and that there is reason to believe that the items are concealed in the companies' premises. The warrants end with a command to the named police officers to enter the stated premises and search for the said things and bring them before the magistrate. The warrants do state the purpose for which they were issued, namely to authorize the police to search for the specified things as being property tainted by the offence of money laundering, seize them and bring them before the magistrate or some other justice. Therefore, I find no failure to comply with the requirement that the warrants must state the purpose for which they were issued.

Reference to Nature of Scheduled Offence

[16] The third ground on which the learned Judge found the warrants invalid was that while the warrants purported to comply with the requirement in s. 27 (a) of the

PCA that a warrant shall include a reference to the nature of the scheduled offence, the warrants failed to so comply because, the Judge held:

> "the informants elected to specify the scheduled offence and such offence does not now exist. The obvious similarity of the offence of money laundering under the Money Laundering (Prevention) Act 1999 and the repealed section 61 (3) of PCA does not provide relief from the strict requirement of a reference to the nature of the scheduled offence in circumstances where the actual section is specified."

[17] The repealed s. 61 of the PCA established the offence of money laundering as part of the objects of the PCA to deprive persons of the proceeds of specified crimes. When s. 61 was extant these crimes, specified in the Schedule to the PCA (and therefore called "scheduled offences"), were all drug related offences. Money laundering was then confined to laundering the proceeds of drug trafficking. The Proceeds of Crime (Amendment) Act 2001 (the amending Act) did not simply repeal section 61 but also incorporated a broadened money laundering offence into the PCA. The amending Act deleted the former scheduled offences and substituted five new scheduled offences in the Schedule to the PCA. Money laundering contrary to s. 3 of the Money Laundering (Prevention) Act is now a scheduled offence. Section 3 makes the laundering of the proceeds of any crime now an offence. Money laundering is therefore no longer confined to the proceeds of drug offences.

[18] Section 25 of the PCA authorizes a magistrate to issue a warrant to search any premises for tainted property. 'Tainted property' means property used in or in connection with, or derived from, the commission of any scheduled offence. Since money laundering is a scheduled offence, it follows that s. 25 authorized the magistrate to issue a warrant to search for property used in connection with the scheduled offence of money laundering.

[19] The warrants stated that:

> "there are reasonable grounds for suspecting that … [the things named in the warrant] constitute tainted property and have been used in the

commission of money laundering offences. Contrary to Section 61 (3) (a) (b) of the Proceeds of Crime Act …".

The warrants undoubtedly referred to the nature of the scheduled offence of money laundering. But the warrants also erroneously referred to the repealed s. 61. The learned Judge regarded this reference as fatal.

[20] In AG v Williams [1997] 3 LRC 22 Lord Hoffman adverted to the failure to specify the section creating the offence in the warrant (at p. 35). He treated it as being of no consequence and pointed out that at that stage no offence had yet been charged. I would respectfully take this to indicate, in this case, that until an investigation had been completed and the particulars of the offence to be charged had crystallized there was no requirement for the investigators to identify a charging section. This would seem to be the reason why s. 27 requires inclusion in the warrant of a reference to the nature of the scheduled offence as distinct from a reference to the section creating the offence. The inclusion, in this case, of a reference to a charging section was superfluous; it was simply not required. I do not see why the inclusion of erroneous and superfluous information should vitiate the warrant in these circumstances when the warrant included the nature of the scheduled offence.

[21] In this regard it is to be noted how generalized is the description of a scheduled offence. Offences listed in the schedule now include the commission in Grenada of an offence, or an act or omission committed abroad that, if it had occurred in Grenada would constitute an offence, punishable if committed by an individual, by death or by imprisonment for 5 years or more. In short, any serious foreign or local crime is a scheduled offence for which a warrant may issue. The schedule does not even identify the law under which an offence needs to fall. That being so there can be no requirement for the warrant to do more than identify the nature of the serious crime in relation to which there is to be a search. Once that offence exists, it does not matter under what law it exists and a superfluous identification of a

charging section is meaningless, regardless of whether the section is correctly or erroneously identified.

[22] In any case, invalidity is no longer the automatic consequence of non-compliance. In R v Secretary of State for the Home Department, Ex parte Jeyeanthan [2000] 1 WLR 354 Lord Woolf dealt with the consequence of failing to use a prescribed form for applying for leave to appeal. The practical effect of not using the prescribed form was the absence of a declaration of truth. At first instance it was held that the failure to use the prescribed form rendered proceedings founded on it a nullity. The headnote accurately states the principle applicable to irregularity or non-compliance:

> "… that in determining the consequence of non-compliance with a procedural requirement the court had to consider the language of the legislation and the legislator's intention against the factual situation and seek to do what was just in all the circumstances; that, in the majority of cases, an inquiry whether the requirement was "mandatory" or "directory" was of limited assistance; that a more just and intended result could usually be achieved by asking whether the requirement was fulfilled by substantial compliance with it and, if so, whether it could or should be waived, and if it was not capable of being, or had not been, waived, what the consequence was of the non-compliance …" .

[23] In the present case there was no requirement to specify a charging section; there was a requirement to state the nature of the offence for which the warrant was issued. What was required was done, what was not required was wrongly done. From the Jeyeanthan decision it is clear that even if there had been the requirement to identify a charging section a mistake in doing so would not necessarily have been fatal. I cannot see why, given that there was no requirement to do so, a mistake in identifying the charging section should have any consequence whatever. I would hold, therefore, that the validity of the warrants was unaffected by a wrong charging section being stated therein.

Information on Oath in Writing

[24] Counsel for the companies presented an additional ground of attack on the validity of the warrants, beyond those contained in the decision under appeal. He relied heavily on the judgment of the High Court of Australia in George v Rockett (1990) 170 CLR 104 F.C. 90/026 to renew the argument that s. 25 of the PCA requires that the police must lay the information on oath before the magistrate in writing. The Australian court, it seems to me, expressly left open the question whether there was a requirement of writing (at paragraph 11) when it stated:

> "In the circumstances of this case, therefore, it is unnecessary to decide whether the complaint on oath required by the section must be in writing, although, as … observed … there is much to be said for the view that a written complaint is desirable. If the validity of the warrant is challenged and the court is ascertaining whether the complaint shows reasonable grounds for suspicion and belief, a written complaint is less open to controversy than an oral complaint."

It is a salutary observation and one that the police would do well to heed. Still, it is not the law that the information must be in writing. This point was made in Williams at p. 30 in these terms:

> "The application is made ex parte and the officer must disclose to the justice all that the latter needs to know in order to discharge his duty. … [S]ufficient information to establish the grounds for suspicion to his satisfaction must be stated on oath. The statute does not require the information to be in writing. An oral statement on oath is sufficient."

That proposition seems perfectly applicable in relation to the PCA which says, in s. 26, that a magistrate shall not issue a warrant unless any further information that the magistrate may require is given "either on oath or by affidavit". Since an affidavit is a written statement on oath the alternative of giving the information "on oath" must refer to an oral statement on oath.

[25] It seems to me that all the information upon which the police relied and upon which the magistrate acted was contained in the Letter of Request. I have already sought to show why that information was sufficient to satisfy the magistrate. So long as the police officer who appeared before the magistrate took the oath to say that he

was relying on the Letter as his grounds for suspecting tainted property and tendered the Letter I do not see what more was required to be done or, indeed, could have been done in the circumstances. This seems a stronger case than **Williams** which decided (see pp. 31-32) that the statement in the warrant that there was good reason to believe that the suspected goods were present on the premises must prima facie be accepted as establishing that the magistrate was satisfied that the police had reasonable cause to so suspect. In the present case it is known what information was presented to the magistrate to satisfy him that there were reasonable grounds to issue the warrants. This court is therefore in a position to decide for itself, rather than simply presume, that there was sufficient information to satisfy the magistrate that the police had reasonable cause to suspect.

Conclusion

[26] Bad drafting and contrived procedures apart, I find nothing wrong with the warrants or the decision of the magistrate to issue the warrants. The grounds for holding the warrants invalid are untenable, in my respectful view, and I would allow the appeal with costs both here and in the court below. I calculate prescribed costs on appeal as $9,666 and at first instance as $14,000.

[Sgd.]
Denys Barrow, SC
Justice of Appeal [Ag.]

I concur.

Albert Redhead
Justice of Appeal

[27] GEORGES, J.A. [AG.]: I fully agree with the clear and cogent analysis and reasoning of my learned Brother Barrow J.A. [Ag.] and his conclusion as admirably expressed in his draft judgment, which I have had the privilege of reading

beforehand. I too would therefore allow the appeal and adopt the order for costs proposed by him in this Court as well as in the court below.

[28] I wish however to make the point that as observed by Barrow J.A. [Ag.] earlier in the judgment. The PCA aims to combat international crime more especially fraud, money laundering and the illicit drug trade globally.

[29] Part III of the PCA in particular contains a number of sweeping provisions for facilitating police investigations and preserving property liable to forfeiture and confiscation.

[30] Perusal of the PCA reveals that it is in a sense all-encompassing in that the legislative scheme makes provision for review of search warrants issued by magistrates pursuant to section 25 of the PCA.

[31] Section 39 of the act clearly sets out the procedure to be followed by any person who has an interest in property that has been so seized. Provision is made thereunder for the Court to grant the appropriate remedy and/or redress where a warrant should not have been issued pursuant to section 25 whether for reason that the requirements of section 26 have not been met/satisfied or for non-compliance with the provisions of section 27.

[32] So that where as in the instant case a challenge is made in respect of the validity of a search warrant issued pursuant to section 25 of the PCA the proper manner evidently is to proceed by way of application for an order pursuant to section 39 of the PCA and not by way of originating motion pursuant to section 16 of the Constitution of Grenada as was in fact done.

[33] Indeed the learned trial Judge at paragraph 12 of his judgment wrote that:

> "The arguments proceeded on the tacit assumption that the Court must first ascertain the validity of the search warrants under the standards set

by ordinary law as a stepping stone to determining whether the entrenched constitutional protection against search has been breached."

[34] In keeping with the proviso to section 16 of the Constitution there being adequate means of redress for the contravention alleged available to the companies concerned under the provisions of the PCA, the Judge in my respectful opinion should strictly speaking have declined to exercise his powers thereunder.

[Sgd.]
Ephraim Georges
Justice of Appeal [Ag.]