

**ANTIGUA & BARBUDA
EASTERN CARIBBEAN SUPREME COURT**

IN THE HIGH COURT OF JUSTICE

CLAIM No. ANUHCV2009/0302

IN THE MATTER OF SECTION 19 OF THE MONEY LAUNDERING (PREVENTION) ACT 1996 [AS AMENDED BY SECTION 12 OF THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT 2001 AND SECTION 17 (a) OF THE MONEY LAUNDERING (PREVENTION) (AMENDMENT) ACT 2002]

and

THE MATTER OF AN APPLICATION FOR AN ORDER FREEZING SPECIFIED PROPERTY IN WHICH THE DEFENDANT HAS AN INTEREST

BETWEEN:

THE SUPERVISORY AUTHORITY
Under the Money Laundering (Prevention) Act 1996
Claimant/Applicant

and

AHMED WILLIAMS
Defendant/Respondent

Appearances:

Mr. Anthony Armstrong and
Mr. Curtis Bird for the
Mr. Steadroy Benjamin for the

Claimant
Defendant

2009: September 10
2009: October 14

DECISION

1. This is an application made under Section 19 B (5) of the Money Laundering (Prevention) Act 1996 ('the Act'), to discharge the Freeze Order made by the High Court pursuant to an application by the Supervisory Authority (the 'Authority')¹ pursuant to Section 19 (1A), 19 (1) (a) and 19 (4) of the said Act.

Background

2. The Supervisory Authority applied to the Court without notice, pursuant to section 19(1)(c), for a Freeze Order, by application dated June 9th 2009, on the grounds that the Defendant was "*suspected of having engaged in Money Laundering activity*"², he also having being charged with the possession of 3 kilos of cocaine with intent to supply, contrary to Section 6 (3) of the misuse of Drugs Act , Cap 283. Further, that the Defendant was, upon a trial, found guilty of the said charge.³
3. Further still, in support of the Authorities application for the grant of the Freeze Order, the Authorities 'Authorized Officer', one, Rono Christopher, appointed under the Act, deposed that the defendant(Ahmed Williams) has an interest as registered proprietor in specified lands registered in the Land Registry as; (i) Registration Section: English Harbour; Block: 35 2480 E; parcel 143, (ii) Registration Section: St. Phillips South; Block: 32 2884 A; parcel 218, with buildings thereupon, for which he is unable to adequately account for the source of funds that was used to acquire and developed it.

¹ Provided for under the Money Laundering (Prevention) Act.

² See Section 19 (1) (c) of the Act as amended by Section 17 (a) of the Money Laundering (Prevention) (Amendment) Act 2002. See Section 2 H of the Act as amended by Section 7 of the money Laundering (Prevention) (Amendment) Act 2002 for the meaning of "Money Laundering Activity."

³ See fn. 1 para 17 below.

4. Section 19(1)(c) provides, that where a person is suspected of having engaged in money laundering activity; the Supervisory Authority may apply to the court for the freeze Order over property "*...in which there is a reasonable suspicion that the defendant has an interest*".(emphasis mine). Section 2D(1)¹ provides that property in which the defendant "*has an interest*" includes; any property that , on the day when the first application is made under this Act in respect of the money laundering activity, is subject to the effective control of the defendant.² There is no dispute that the subject properties in this matter fall within the ambit of section 2D(1) of the Act.

5. Further evidence was led by way of Affidavit by the said Rono Christopher for the Claimant/Authority, dated June 9th 2009 at paragraph 9 and 10 thereof; that the defendant is now in the process of exchanging parcel 218 for another – parcel 97 - pursuant to an agreement between the Central Housing and Planning Authority (CHAPA) and the Defendant.

6. The Application for the Freeze Order was made in contemplation of Civil forfeiture proceedings pursuant to Section 20 A of the Act,³ in relation to the property the Claimant sought to have frozen. Having regard to the matters contained in the Affidavit in Support of the initial Without Notice Application for the grant of the Freeze Order, the Court was satisfied that there were reasonable grounds for the authorized Officer – Rono Christopher – to suspect that the Defendant had

¹ Amendment to the Act. See S.3 of No. 6 of 2001

² See also Part IV B, section 20A (2), (3) of the Act, for the application of its terms and effects.

³ As amended by Section 22 of the Money Laundering (Prevention) (Amendment) Act 2002.

engaged in Money Laundering Activity.¹ The Court subsequently granted the Order.

7. In so far as is relevant, the Freeze Order was granted in the following terms:

“(i) That all rights and interests of the Defendant, Ahmed Williams in the property listed be frozen.

“(ii) That the property shall not be disposed of or otherwise dealt with by any person until further order of the Court.

“(iii) That the property referred to in paragraph 1 above and subject to this order are lands (including buildings) registered in the land registry”.

8. Mr. Rono Christopher deposed that he believed that the Defendant had engaged in Money Laundering Activity and set out the grounds for such belief substantially in para. 7 (a –g) of his affidavit of 9th June, 2009.

9. The grounds there set out, include the circumstances in Paragraph 7 (e) of his Affidavit, in relation to the apprehension of the Defendant running from a motor vehicle, in which it is alleged that law enforcement Officers found 3 kilos of cocaine, US \$ 16,000.000 and EC \$ 41,965.00 cash and a firearm; the circumstances in para.7(b), of the defendant’s conviction for possession of cocaine with intent to supply and with intent to sell and generally; the circumstances found to exist in support of the said charges and convictions by the learned Magistrate in his written decision and further; the acquisition and development of the subject properties.

¹ See section 2(1) of the Act for the very broad definition of Money laundering and buttressed by section 2H of the said Act.

10. The return date for the inter partes hearing of the grant of the interim freeze order came up on the 27th July, 2009, some three (3) days prior to the Court's long vacation, and ten (10) prior to the expiration of the 30 day life of the said interim order granted on the 7th July, 2009. On the 27th of July 2009 the effect of the Freeze Order was extended from the 7th August 2009 to the 31st August, 2009. On the 18th August, 2009 the Defendant filed an application for the discharge of the said interim freeze order. This application to discharge did not dispute the validity of the Order and was also fixed for hearing on the 31st August, 2009. On the 31st August, 2009 inter partes hearing, several management orders were made in relation to the filing of Affidavits, further affidavits and an Affidavit 'trial bundle'. The Order was extended until further order.¹

11. The application for the discharge/retention of the said Freeze Order was subsequently heard and decision reserved until now.

Application to discharge Freeze Order

12. The Application to discharge the Freeze Order was filed on August 18th, 2009 and is made pursuant to Section 19 B (5) of the Act.

13. Section 19B(5) provides that if the High Court has made a Freeze Order against any property under Section 19, and the Defendant had an interest in that property, the Defendant may apply to the High Court to discharge the Freeze Order.

¹ The effect of 19A(2) is avoided by virtue of the defendant already being charged with a Money Laundering offence, although, arguably, not being convicted of such an offence.(see fn.1 of para 17 below for explanation with respect to the 'conviction')

14. The High Court may discharge the Freeze Order if it is satisfied that *“(i) the property was not used in, or in connection with, any unlawful activity and was not derived, directly or indirectly, by any person from any unlawful activity”*; ¹ *“(ii) the property was not related in any way, directly or indirectly, by any unlawful activity including (and without limiting the generality of the foregoing) any Money Laundering Scheme established in Antigua and Barbuda or elsewhere”* ²
15. The Act, at section 19 B(6), goes on to provide that the onus of proof in an application made pursuant to 19(5) lies on the person seeking relief under those sections. The Defendant is seeking relief under 19(5) and filed several affidavits in support of his application.³

The Affidavits - The Evidence

16. The Defendant, Ahmed Williams, relied on several affidavits filed at different dates, in support of his application to discharge, seeking to establish that none of his properties was acquired and/or obtained from unlawful activity or related in any way by any unlawful activity as set out in para. 14 above. The several Affidavits are contained in his Affidavit Bundle filed in this matter. He said that none of his properties were used in, or in connection with, any unlawful activity and was not derived, directly or indirectly, by any person from any unlawful activity to include Money Laundering Activity. Further, he said that his properties were not in anyway directly or indirectly, related to any unlawful activity including any money laundering scheme established in Antigua and Barbuda or elsewhere.

¹ 19 B (5) (e) (i)

² 19 B (5) (e) (ii)

³ See Defendant’s Affidavit Bundle filed in support of his Application to discharge the Freeze Order.

17. In his affidavits filed on the 18th and the 28th of August 2009, he indicated that he purchased the two properties on the 21st June, 2002 (parcel 218) and on the 19th November, 2003 (parcel 143) respectively and it was on 21st November, 2007, some four (4) years after his acquisition, that he was arrested and charged for the Money Laundering Offences (Possession of cocaine with intent to sell and possession with intent to supply). He was convicted of several offences including the two 'possession' offences on the 1st August, 2008 and is awaiting the appeal.¹

18. The Defendant said that he worked hard together with his common law wife and a contribution from his father to acquire the lands and that he commenced construction of the three buildings on his land with the help of his friends and a RBTT mortgage loan facility.

19. The Defendant says he is a businessman who sold imported Greenheart from Guyana in 2003 to 2004, and since 1997, was a motor vehicle mechanic and subsequently a part owner of the motor repair business known as "Walters Garage". He exhibited a limited number of Customs declaration forms and a commercial invoice. He also exhibited communication from Walter Garage showing his initial employee status and salary. Further, he says that during the years 1993 to 1997 he worked at various places including Geotech & Associates as a Laborer, Dougies Bar and Restaurant, as a Bar tender

¹ Counsels for the Authority conceded on earlier separate High Court civil proceedings, on the 5th of June 2009, concerning the same circumstances, that the said Magistrate's Court decision in support of the said conviction was unclear in certain material particulars and did not clearly support a conviction for an offence that can be deemed a money laundering offence. Those civil proceedings were withdrawn. But see also section 2H for relevance and continuing effect of convictions even quashed or set aside.

and Craig's tiling as a Tiler. The defendant contends that because there is no record of him earning an income in the records of Social Security and the Inland Revenue departments, it does not mean he did not earn income from his lumber business or any of his other employment activities during the material time.

20. The Defendant's common law wife, Idressa Ajene Andre, is employed in a Bank, Antigua and Barbuda Investment Bank (ABIB) for the last 8 years, and now as the Supervisor of the Treasury Department for the said Bank. Prior to this last employment position, she worked in the Offshore gaming sector and upon secondment by her employer, ABIB, spent two (2) years working overseas in the Turks and Caicos Islands earning a salary of US\$ 2,800.00/month. He produced a letter from the bank in support of her income level. He deposes to having pooled his resources with Idressa Andre and his father, Watty Williams, to acquire the property.¹

21. The Defendant deposed to his interest in acquiring land and his negotiation for these purchases deposit and acquisition. He speaks of his import lumber business and refutes the allegation made by Rono Christophers' Affidavit filed in opposition to the application to discharge the freeze order, that his employment history and income generation are inadequate for the subject property acquisition and development.

22. Idressa Andre filed an affidavit in support of the application to discharge, set out her efforts, and her joint efforts with the Defendant to acquire the subsequent properties and construction of the structures thereupon. She provides her reasons for not being named a registered proprietor on either of the properties. She joins with the

¹ Para. 33 of affidavit filed on 18th August 2009.

defendant in saying that she has an equitable interest in the said properties by dint of her financial contributions. She deposes to having a certificate of Deposit in her name in the sum of over EC\$112,000.00 which she accumulated during her work in the Turks and Caicos Islands. The defendant further relies on the earlier affidavit evidence of his father Watty Williams of his contribution to the land purchase money, in support of his application to discharge the freeze order.

23. Rono Christopher, in his Affidavit in Reply in relation to the Application to discharge the freeze order, refutes the defendant's account of his bona fide acquisition of the subject properties, the substance of which is contained in the said Affidavit in reply of the 7th of September, 2009. The essence of his evidence is that the defendant's financial outlay and assets, discernibly exceed his proved income and income capacity. Further, he submits that the quality of proof of the defendant's assertions are for the most part absent and in any event inadequate. Counsel for the Authority submits, in essence, that having regard to the onus of proof being on the defendant, on the evidence before the Court, the defendant has not met the evidential threshold to elevate his assertions to the level of proved facts.

24. Rono Christopher contends that the Defendant's averments lack cogent documentary support; where one would expect such support to be in existence and available.¹ He contends that the documentary evidence of importation of wood, insufficient to show any revenue accruing as the defendant alleges. He points out the Defendant's

¹ In *R V Walbrook etc*, taken from the Crim.L.R. head note, a case involving drug trafficking and a confiscation order, under specific statutory provisions in the UK not entirely dissimilar to ours with respect to the onus of proof on the defendant, the Court said in relation to the facts before it "*...where the offender had an asset in the form of a debt, the onus was on him to satisfy the court that the realizable value of the debt was less than its face value. To do this, he had to produce clear and cogent evidence; vague an ungeneralized [sic] assertions unsupported by evidence will rarely if ever be sufficient to discharge the burden on the defendant.*"

failure to prove any earnings after 1996. He shows that Idressa Andre was unemployed for most of 2001, but yet they were able to purchase land in early 2002. He notes that the CD still standing in the name of Idressa Andre is of no relevance to the past acquisitions, the subject of this matter.

25. The Affidavit in reply discloses, after obtaining an estimate of the cost of the construction of the defendant's existing structures, the failure of the Defendant to account for \$162,000.00 in relation to the construction of the three structures on the subject lands after and notwithstanding obtaining the RBTT Bank mortgage loan.
26. He noted that Watty Williams, the Defendant's father, from whom the Defendant in a prior application before the High Court, allegedly provided him some assistance, was himself convicted on six separate occasions for drug related activities. The conviction record is exhibited to the Affidavit.
27. Rono Christopher goes on to point out that the substantial Certificate of Deposit standing in the name of Idressa, which she suggest was accumulated in her time in the Turks and Caicos Islands, still stands in her name and in any event was acquired after the acquisition of the subject properties and the construction of the structures thereupon. Rono Christopher went on to explained the process by which he analyzed the financial and asset data to arrive at his conclusion and the additional official records that he perused in his investigation.
28. Rono Christopher said the Social Security records show negligible earnings by the defendant and that the defendant was not known to Inland Revenue prior to 16th of March 2004. The Inland Revenue records, he says, reports no record in relation to the sale by the

defendant of greenheart lumber. The defendant has not refuted this fact.

29. Rono Christopher deposes to the failure of the defendant to provide details of how the resources were pooled, who contributed what, in what proportion, when was this pool started and where was it kept. He said Idrissa Andre herself, has failed to provide the details of her contribution to that pool such as the extent of her contribution, the method by which, and time the contribution was made. Further, the evidence of Rono Christopher suggests to me that Watty Williams account of his income is inconsistent, unsubstantiated and in part appears to relate to an irrelevant time period.

30. In relation to the payment for the properties, Rono Christopher deposes that they were paid for by the defendant with cash rather than Cheque or other more convenient form of payment. This was not denied in the defendant's affidavit. Mr. Christopher went on to note that such cash payments eliminated the audit trail that might have traced the funds back to drug trafficking activities.

31. The Claimant by way of Rono Christopher deposed that the Affidavits of Ahmed Williams, Idrissa Andre, and Watty Williams are fabrications.

32. The claimants relied on the following authorities:

- 1) Faulton v Attorney General of Trinidad & Tobago (1987) 30 WIR 351
- 2) Terrance Daniel Agombar V R [2009] EWCA Crim. 903
- 3) R V Terrance George Croft per Justice Wright, 15 June 2000 No. 199906731/Y3 C.A. Criminal Div.
- 4) R V Briggs Price [2009] UKHL 19
- 5) R V Robert E. Barwick C.A. Crim. Div. 13th Oct. 2000.
- 6) R V Walbrook and Glasgow [1994] Crim.L.R. 613, C.A.

Conclusion

33. The Defendant, by his counsel, Mr. Steadroy Benjamin, by way of submissions asked the Court to consider the Claimant/Authority as not having met the threshold to have obtained the freeze order of the 7th July 2009 in the 1st place. The defendant submits further, that the claimant has not discharged its evidential burden at the hearing of the application to discharge and in any event not having satisfied the requirements of the Act in order to maintain the freeze order.
34. Further, Mr. Benjamin submits that the properties were acquired some four (4) years prior to the defendant being charged or convicted for the offence, and well prior to this Civil action being commenced against him.
35. Mr. Benjamin submits that the Court, on the state of the evidence, must now be satisfied of the circumstances under Section 19 B 5 (e)¹ requiring the court to discharge the Freeze Order.
36. Mr. Anthony Armstrong, counsel acting for the Supervisory Authority together with Mr. Bird, contend that the Claimant's evidence in support of maintaining the freeze order in opposition to the Defendant's application to discharge, is strong and meets the threshold having regard, inter alia, to section 19 B (6) of the Act² - *onus of proof*.

¹ Supra

² Supra

37. Further, contends the Claimant, Section 2 D (1) of the said Act captures the subject properties, whenever they may have been acquired.¹

38. I note that the basis for the claimants suspicions of the defendants money laundering activities are not limited to the charge and conviction of the defendant under the Misuse of Drugs Act. But, by virtue of the s 19(1) (c) of the Act, the claimant relies on the historic activities of the defendant including the conviction and the prior property acquisitions, to found the '*suspicion*'.² On the evidence, I find weakness in the inherent consistency of the defendant's assertions and explanations as identified in the claimant's affidavits. I am not satisfied that the documentary evidence shows a lumber import business activity or income generating capacity as alleged by the defendant. I find the assertion by Idressa Andre of her equitable interest in the property not made out on the evidence. I also find the reasoning provided by her for her not having got her name on the land title Register strongly defiant of logic and reality. Her physical presence at the Bank or Registry has never been and is not now a bar to her name being placed as a proprietor. I am not satisfied with the sufficiency of proof of Watty Williams evidence for the same reason identified in the affidavit of Rono Christopher, and indeed, am not satisfied of the sufficiency of the evidence of the Defendant and Idressa Andre also.

39. The source of funds for the acquisition and development of the subject properties are sufficiently unsubstantiated so as to give rise to the reasonable suspicion held by the Authority that; the defendant is

¹ See Part IVB, section 20A (1) of the Act for applicable period in the later Forfeiture proceedings phase.

² See 2H(a),(b), (c) for the effect of convictions even quashed or set aside.

engage in the statutorily prohibited activity and, that the defendant has an interest in the subject property. On the other hand I find the evidence of Rono Christopher to be inherently consistent, truthful, relevant, logical and in all the circumstances withstands scrutiny.

40. Having perused and analyzed all the Affidavits filed and/or relied upon by the parties in this matter, I am satisfied that the original grant of the freeze order of the 7th of July 2009 was well founded under the Act and Law. Further, on the defendant's application to discharge now before the court, I am not satisfied of the existence of the two circumstances under 19 B (5) (e) as set out in para 14 above.

41. Further still, even if the onus of proof was on the claimant to prove the said circumstances under the said 19 B (5) (e); on the evidence, they have, on a balance of probabilities done so.

42. It is hereby Ordered:

- I. The application by the Defendant filed 18th August, 2009 to discharge the Interim Freeze Order of the 7th July, 2009 is dismissed with costs.
- II. The said order of 7th July, 2009 to remain in force or alternatively, is renewed on the same terms and conditions as the Order of the 7th July 2009, until further order.
- III. That costs be costs in the cause.

David C. Harris
High Court Judge
Antigua & Barbuda