

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2012/0567

BETWEEN:

CRISTIAN TAGLIAVENTI

Claimant

AND

EDWARD CROFT
ONDCP (Office of National Drug and Money Laundering Control Policy)

Defendants

Appearances:

Mr. Lawrence. Daniels for the Claimant

Ms. Annette. Mark for the Defendants

2014: October 01,
October 09
October 10
2015: January 09

JUDGEMENT

[1] **Cottle, J.:** On or about 11th May, 2012 the local media publicized the arrest of one Dante Tagliaventi by US authorities on a number of drug trafficking related charges. Mr. Tagliaventi owned a number of businesses in Antigua and Barbuda. The defendants at once embarked upon an investigation of Mr. Tagliaventi's businesses for possible money laundering violations. The claimant is the son of Dante Tagliaventi. On 14th May, 2012 officers of the ONDCP arrived at premises occupied by the claimant. They showed him a search warrant which had been issued by

the Magistrates Court. They searched the house and took away certain business records, cellular telephones, computers and external drives used for storing data.

[2] The officers later conducted a search of the La Bussola Restaurant. According to the Inland Revenue Department, La Bussola Ltd. Is a partnership owned by brothers Omar Tagliaventi and Cristian Tagliaventi in proportions of 70-30 since 2007. However, the business name register maintained by the Antigua and Barbuda Intellectual Property and Commerce Office reveals that the partners of the enterprise known as La Bussola Restaurant & Bar located at Runaway Bay are Dante Tagliaventi and Cristian Tagliaventi. That registration entry was never amended. It was, no doubt, this consideration which moved the magistrates to issue a search warrant for the premises where the restaurant was operated. In his statement of claim the claimant did not aver that any items were seized and detained by the defendants from the restaurant property. The case was based solely on the allegation that items were taken and retained from the home of the claimant. In his claim form the claimant seeks to recover:

- (1) Damages for trespassing on the Claimant's property and the unlawful retention of the Claimant's property namely:- one (1) Dell Computer, one (1) Powerbook Pro Mac Computer, one (1) Acer Laptop, six (6) external drives, two (2) pen drives, one (1) laptop bag, one (1) ray ban sunglasses and business records when they had no authority to do so.
- (2) Damages for the wrongful detention of the Claimant's property by the officers, employees, servants, and/or agents of the Defendant from 14th May, 2012 and continuing.
- (3) Damages for loss of trade and/or business.
- (4) Aggravated and/or exemplary damages.

The Evidence

[3] The claimant filed a witness statement and he was crossed examined. In his evidence in chief he says that on 14th May, 2012 the defendants came to his home. They removed certain items. These were taken to the offices of the defendants and the claimant was detained and questioned for 48 hours. He was then released but his property was kept. He was not given a list of the

seized items. He says that his detention prevented him from operating his business and the negative publicity caused him to lose customers. The defendants also caused an administrative freeze to be put on his business bank account. Cheques he wrote to suppliers were not honored by the bank. The bank then decided to close his accounts. He says that the daily sales for 14-16th May and the rest of May and June 2012 amounted to approximately \$6,000. He could not use his credit card. Because he had no access to his computers this caused him a loss of \$3,000 since he had to operate the restaurant without computers. It cost him \$10,000 to re-enter data.

- [4] When cross examined, the claimant says he did not get his computers back until November 2012. He admits that the closure of his bank accounts was at the instance of his bankers and had nothing to do with the defendants.
- [5] For the defendants, Rono Christopher gave evidence. He is a senior financial investigator attached to the ONDCP. In his evidence in chief he swore that Dante Tagliaventi is the father of the claimant and Omar Tagliaventi. He was arrested on 11th May, 2012 and charged by the US authorities with conspiracy to import narcotics into the US and conspiracy to possess narcotics with intent to distribute. The said conspiracy was alleged to have occurred in Antigua among other places. This caused the defendants to suspect that Dante Tagliaventi had committed offences against the laws of this country.
- [6] The Money Laundering (Prevention) Act at section 19(9) permits the defendants to direct a financial institution to freeze property for up to 7 days to permit an application to a court for a freeze order. Mr. Christopher went on to add that he received information that the claimant managed his father's business affairs while the father was out of Antigua and he might be moving items from Dante's business premises. Warrants were therefore obtained. When the jewelry and leather goods store operated by Dante was searched, the jewelry stock could not be found. The claimant denied any knowledge of the whereabouts of the stock in trade. The security video system had also been removed so the video data captured could not be obtained by the officers. Most of the items seized were returned to the claimant 17th May, 2012 but some electronic items were retained for analysis. The delay in returning those items was due to the fact that foreign expertise was

needed to conduct the analysis as no local expertise exists. As soon as the investigation was completed the items were returned.

The claim for trespass to property

[7] Counsel for the claimant contends that the search of the claimant's property was unlawful because the police were not looking for evidence against the claimant but rather against his father. His father did not live with the claimant. According to counsel's argument, this means that there was no good reason for the magistrate to issue a warrant to search the claimant's home.

[8] Section 28(1) of the Office of National Drug and Money Laundering Act 2003 provides as follows:-

“Any Magistrate who is satisfied by the evidence on oath or by affidavit of an ONDCP Officer or Police Officer that there is reasonable ground for believing that there is, or will be within the next 72 hours, in any building, receptacle, vehicle or place anything which there is reasonable ground to believe will afford evidence as to the commission of a specified offence may at any time issue a warrant authorizing an ONDCP Officer or police officer to search such building, receptacle, vehicle or place for any such thing and to seize to be dealt with according to law.”

[9] As can be readily seen upon reading the section, there is no requirement that premises which are to be searched belong to a suspected person. The magistrate is empowered to authorize the search of any building or place once he has been satisfied by evidence on oath that there is reasonable ground for believing that relevant evidence may be found there. To accept the argument of counsel for the claimant would mean that a criminal need only keep evidentiary material on premises owned by another to insulate them from search and seizure by investigating authorities. This obviously cannot be the case.

[10] In the present instance there were clearly grounds for suspecting that a search of the premises of the claimant may have revealed evidence. He had the conduct of his father's affairs. The police were told that items were being moved from the business premises of the father. When they

searched, all the valuable jewelry stock in trade was missing. The claimant did not complain that thieves had stolen them. The security camera footage was missing. All of this afforded reasonable grounds for the issue of the search warrant. I conclude that the warrant was proper.

The detention of the items seized

[11] The evidence reveals that most items taken by the defendants from the claimant's home were returned to him on 17th May, 2012. No complaint is made concerning these. The claimant did not plead detention of items taken from the restaurant. The defendants deny removing any items from the restaurant. I find as a fact that nothing was taken from the restaurant. Indeed the claimant wrote to the defendants concerning the detained items. No mention was made of anything seized at the restaurant.

[12] The unchallenged evidence of Rono Christopher is that in the absence of local expertise, the police must get the assistance of foreign law enforcement, here from the US through the good offices of the US Embassy in Barbados. In circumstances I find that the period of detention of the items was reasonable.

Loss of Business/trade

[13] As I understand the claimant's case he says that the detention of his computers caused him not to be able to operate his restaurant and the closure of his bank accounts caused him problems with his suppliers and adversely affected his credit-worthiness with them.

[14] Under cross examination the claimant conceded that it was his bankers who decided to close his accounts. The temporary administrative freeze obtained by the defendants could only have lasted for 7 days and would have long expired before the accounts were closed. I do not accept that there is a close enough connection between the retention of the claimant's business computers and his loss of business or trade. Antigua is a small island. The arrest of the claimant's father was widely publicized. It was more likely that this would have led to a loss of customers and a reluctance of suppliers to trade with the claimant's businesses.

[15] I conclude that the claimant has failed to establish his pleaded claim on a balance of probabilities. The claim is dismissed. The defendants will be paid their prescribed costs in the sum of \$7,500 by the claimant.

Brian Cottle
High Court Judge