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IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

GRAND COURT CAYMAN ISLANDS

CAUSE NO. 315 OF 1997

IN THE MATTER OF THE PROCEEDS OF CRIMINAL CONDUCT LAW 1996

AND

IN THE MATTER OF THE MUTUAL LEGAL ASSISTANCE (UNITED STATES OF AMERICA) LAW 1986

AND

IN THE MATTER OF WILLIAM J. McCORKLE ET AL

Before Harre CJ

For the Attorney General - Ms. Lisa Agard & Mr. Anthony Akiwumi

For the applicants - Alun Jones Q.C. & Mr. Charles Quin

JUDGMENT

This is an application to discharge a restraint order made under the Proceeds of Criminal Conduct Law 1996 ("the PCCL") on 21st May 1997. Under the Order, William J. McCorkle and Chantal McCorkle, his wife were restrained from disposing or dealing with funds deposited in three accounts at the Royal Bank of Canada. The

conduct of Mr. & Mrs. McCorkle which was alleged as the basis for the application for the Order included mail fraud, wire fraud, bank fraud, laundering of money instruments and money laundering in relation to what was described as a massive tele-marketing fraud in the United States.

The United States of America are designated under the Proceeds of Criminal Conduct (Designated Countries) Order 1997 as a country to whose external confiscation orders and proceedings the PCCL shall apply and it is necessary now to explain and set out the various provisions of the PCCL which apply both to external confiscation orders and the jurisdiction to make restraint orders by virtue of them.

The PCCL is divided into three Parts. Part I contains a short title, general interpretative provisions and definition of principal terms used. Part II relates to Cayman Islands offences and orders and Part III to enforcement of external orders. Section 29, which is the first section of Part III, provides in subsection (2) that the provisions contained in the Schedule shall apply to external confiscation orders and to any proceedings which have been or are to be instituted and which may result in external confiscation orders being made in designated countries.

"External confiscation order" is defined in subsection 2(1) of the PCCL as follows -

> "external confiscation order" means an order made by a court in a designated country for the purpose -
> (a) of recovering -
> (i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Law applies; or

(ii) the value of property so obtained; or
(b) of depriving a person of a pecuniary advantage so obtained;
and the reference in this definition to an order includes any order, decree, direction or judgement or any part thereof, however described."

Under subparagraph 5 (1) of the Schedule to the PCCL the powers conferred on the Grand Court to make a restraint order under paragraph 6 (1) are exerciseable where -

(a). Proceedings have been instituted against the defendant in a designated country; and

(b). Proceedings have not been concluded; and

(c). Either an external confiscation order has been made in the proceedings or it appears to the Grand Court that there are reasonable grounds for thinking that such an order may be made in them for at least the minimum amount.

The institution of proceedings includes, as provided in Paragraph 2 (2) an application to a court in the United States for an external confiscation order as well as an indictment, information or complaint filed against a person in respect of an offence. The powers of the Grand Court also exerciseable in accordance with subparagraph 5 (2) of the Schedule where the Court is satisfied that proceedings will be instituted against the defendant in a designated country within seven days of the application for a restraint or charging order.. Where an order has been made by virtue of subparagraph 5 (2), subparagraph 5 (3) provides that the Attorney General shall notify the court immediately if proceedings have not been instituted within 7 days of the application for the order and the court shall discharge the order if they are not so instituted.

Section 5 (7) (c) provides that references to an offence to which this Law applies are references to all indictable offences, other than drug trafficking offences.

Paragraph 1 of the Schedule reflects section 29 (2) to which I have already referred. It provides as follows -

> "This Schedule shall apply to external confiscation orders registered under section 30 and to any proceedings which have been or are to be instituted and which may result in such external confiscation orders being made in designated countries, and to the extent that it is at variance with the preceding sections of this Law in relation to the administration and enforcement of external confiscation orders and proceedings which may result in external confiscation orders the terms of this Schedule shall prevail."

Among the general interpretative provisions of the Schedule are the following -

> "3(1) In this Schedule -
>
> (a) .....
>
> (b) references to conduct to which this Schedule applies are references to conduct which -
>
> (i) constitutes an offence to which this Law applies or would constitute such an offence if it had occurred in the Islands, other than drug trafficking offences and offences which relate directly or indirectly to the regulation, imposition, calculation or collection of taxes subject to (ii);
>
> (ii) constitutes an offence to which this Law applies or would constitute such an offence had it occurred in the Islands and which involves -
>
> (I) wilfully or dishonestly obtaining or conspiring to obtain money, property or valuable securities from other persons by means of false or fraudulent pretenses or statements, whether oral or written, or accounting documents regulating or affecting benefits available in connection with the laws and regulations relating to income or other taxes; and

> (II) wilfully or dishonestly making or conspiring to make false statements, whether oral or written, to government tax authorities with respect to any tax matter arising from the unlawful proceeds of any criminal offence triable on indictment, or wilfully or dishonestly failing to make a report or return to government tax authorities as required by law in respect of, or to pay the tax on, any such unlawful proceeds."

The application to set aside the order rests on eight grounds. They raise important questions with regard to the interpretation of the PCCL.

GROUND 1 - The PCCL does not apply retrospectively.

Section 2 (4) of the PCCL, which came into force on the 23rd December 1996, reads as follows -

> "Nothing in this law confers any power on any court in connection with offences committed before the commencement of this law or proceedings against a person for an offence instituted before the commencement of this law."

Exhibited to an affidavit of Mrs. McCorkle dated 10th December 1997 is an amended verified complaint for civil forfeiture in rem which was filed in the United States District Court Middle District of Florida, Orlando division on 28th May 1997. The defendants in the complaint are the contents of Account Numbers 256-312-0 and 735-775-9 at the Royal Bank of Canada, Grand Cayman in the name of William J. McCorkle and contents of Account Number 207-467-2 at that bank in the name of National Media Limited. It is alleged that on the 26th July 1996 William J. McCorkle

deposited US$2,999,995 into account 256-312-0 and an additional US$999,995 on the 26th August 1996 and that he also maintained the additional account 735-775-9 which was opened on 5th September 1996 and used to deposit interest earned from a Certificate of Deposit. Other transactions, both before and after 23rd December 1996 are also set out in the complaint. The argument made on behalf of Mr. & Mrs. McCorkle is that most of the property sought to be restrained in the order dated 21st May 1997 was money believed to have been transferred to Grand Cayman before 23rd December 1996, the commencement date of PCCL and the order granted by the Grand Court was in relation to the whole of the proceeds of the money and not limited to transfers after 23rd December 1996 or by reference to any alleged criminal conduct or offences after that date.

On behalf of the Attorney General that point is sought to be addressed by two submissions. The first of these is that the modifications to the law when applied by the Schedule to external confiscation orders and related proceedings are not subject to the provisions of Section 2 (4). The submission was that Section 2 (4) is directed at offences and does not apply to external confiscation proceedings and that the expression "proceedings which have been or are to be instituted" indicates that the legislature contemplated "proceedings" within the ambit of the schedule as opposed to "offences" within the ambit of the law that predated the coming into force of the PCCL. I do not think that it is right to read that meaning into paragraph 1 at all. Proceedings may, for the purposes of Section 29, the evidentiary provisions of Section 32, and paragraph 5 of the Schedule either have been instituted or be instituted in the future. But that in my view is in no way inconsistent with the proposition that those

proceedings which have been instituted are to exclude those instituted, as well as offences committed, before the commencement of PCCL. The express reference to proceedings for an offence instituted in Section 2 (4) lends support to that view. While reference to authorities construing other statutes may sometimes be helpful, the cases cited by Mr. Akiwumi are all distinguishable. In particular, the statute considered in R v. Secretary of State Ex-parte Hill (1997) 2 All ER was silent as to whether it extended retrospectively. As Hooper J said in his judgment -

> "If Parliament had intended the Act to relate only to extradition crimes committed after its coming into force I have little doubt that the Act would have said so."

In relation to the subject matter of PCCL that is what our Legislative Assembly has done. Moreover, I can see no reason at all why that body should have given amnesty to Cayman Islands proceedings for offences which would give rise to orders under Part II of PCCL proceedings under Part III.

In Re JL and In the Matter of the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) Order 1990 an issue addressed by the court was the meaning and effect of the "modification" made by the 1990 order to the 1986 act. The 1990 order was dependent on the making of an order in Council under Section 26 of the 1986 Act but was not subordinate to it and took effect subject not to the Act but to the modifications provided by the order itself. In the present case we are concerned not with the relationship between two different enactments but with the interpretation,

according to the plain meaning of its words, of a provision of an interpretative nature contained in one part of the PCCL in relation to another part of that same Law.

I find that the exclusion of the clear and unambiguous words of Section 2 (4) are not among the modifications to the law introduced by the schedule. There is no variance between the preceding sections of the Law and the Schedule.

Having made that finding I need to consider the alternative submission that "the conduct" which is alleged to be the subject matter of the application, continued on and after the commencement of the PCCL. In relation to that, I was referred to three affidavits from the United States - those of Carl Coffman dated the 11th December 1997, of Lisa M. Young of 15th July and 8th December 1997 and of Maria L. De Marco dated the 14th May 1997. For present purposes I think that I need refer directly only to the latest of these, sworn by Carl Coffman. He is a special agent of the Internal Revenue Service although he depones that in many instances he is assigned to a case solely to investigate money laundering violations. His evidence is that ongoing review of material seized under federal search warrants at the McCorkles' residence and business locations reveals that the criminal activity engaged in by them continued. In particular he says that a continuing review of bank records obtained on and after 9th May 1997 reveal that funds have been transferred on various dates up to 30th April 1997 from the United States to the Royal Bank of Canada in Grand Cayman into accounts owned or controlled by William McCorkle and that they represent some of the proceeds of the ongoing scheme to defraud. Mr. Coffman's affidavit does not purport to express an opinion on the relevant United

States law as to whether money laundering is a continuing offence per se and although there was affidavit evidence as to that matter from both sides, that was not a submission which was ultimately relied on. I have come to the view that the fact that further acts alleged to be criminal conduct of a similar nature occurred after the commencement of PCCL cannot have the effect of bringing acts which occurred before that commencement, and in respect of which a specific claim for a restraint order is made, within the ambit of that Law. That in itself leads me to the conclusion that the Order, which relates to a substantial extent to transfers of funds made before 23rd December 1996 should be discharged.

Before I move on to express a view on the other grounds of the application to discharge the Order it is convenient at this point to consider the nature of the criminality which has to be shown. The effect of Paragraph 3 (1) (b) of the Schedule, to the extent that it is relevant to this application, and bearing in mind the definition of "an offence to which this law applies" in Section 5 (7) (c) is that references to conduct to which the Schedule applies are references to conduct which constitutes an indictable offence or which would constitute an indictable offence if it had occurred in the Islands. So one has to relate the conduct complained of in the United States but not yet subject to indictment to an indictable offence here. That said, I am satisfied that the requirement is met in this case. I have before me much more than a bald recitation of provisions of American statutes. The conduct complained of is described in detail in the affidavit of Maria de Marco dated 14th May 1997 which formed part of the original MLAT request. The Memorandum Opinion and order of the United States Magistrate Judge of the United States District Court, Orlando Division, which

was adopted by the District Judge on 24th September 1997 is before me and analyses the "traditional badges of fraud." There is ample evidence here of conduct which would constitute an indictable offence in the Cayman Islands.

This is distinguishable from a requirement of dual criminality.

It is convenient to deal with Grounds 2 and 3 together.

GROUND 2 - No proceedings in the designated state for the order required by paragraph 5 (3) of the schedule to PCCL were instituted within 7 days of the application in Grand Cayman.

GROUND 3 -The purpose of the schedule is to permit the granting of a restraint order where criminal proceedings have not been instituted within 7 days in exceptional circumstances.

Paragraphs 2 (2) and 5 (2) & (3) of the Schedule are relevant. I have already referred to these.

In both paragraphs 2 and 5 time runs from the date of the application to the court and it is crucial to determine what that phrase means. The effect of paragraph 2 (2) is that proceedings are instituted in the United States where an indictment, information or complaint has been filed against a person in respect of an offence or an application has been made to a court there for an external confiscation order.

The question is whether the filing of the application for an external confiscation order (as in the case of an indictment, information or complaint in respect of an offence) rather than the hearing of the application by a tribunal constitutes the application. It is attractive at first sight to accept the first of these alternatives. But I think that is wrong. In relation to an application to the Grand Court for a restraint order, "application" must mean more than a mere filing in a courts office or registry because there is no way in which a Grand Court could be satisfied that proceedings will be instituted against the defendant in a designated country within 7 days of the application for a restraint order unless that application is before it. It must mean the day on which an application is actually before the court. No application for an external confiscation order was before a court within 7 days. On any view the word "application" in paragraphs 2 (2) and 5 (2) and (3) must be interpreted in the same way. If the opposite view is taken and it means filing, the filing in Cayman on 20th May of the application for the restraint order was more than 7 days before the filing of the application for the external confiscation order on the 28th. The 7 day requirement is not a technicality. It is to be strictly enforced in the exceptional circumstance where a restraint order is sought before proceedings have been instituted against a defendant. This is the second ground on which I have reached the conclusion that the restraint order should be discharged.

GROUND 4 - The affidavit accompanying the application to the Court was not made by the appropriate authority and GROUND 6 - Material non-disclosure.

It is common ground that the appropriate American authority by virtue of the Proceeds of Criminal Conduct (Designated Countries) Order 1997 is the Director of the Office of International Affairs, Criminal Division, Department of Justice. It is argued that there was no jurisdiction to make the restraint order because the affidavit deposing the facts of the case was made by an Assistant United States Attorney in Florida, Ms. De Marco.

There is an affidavit dated 8th December 1997 from Mr. Thomas Snow, the Deputy Director of the Office of International Affairs of the Criminal Division of the United States Department of Justice who signed the original Letter of Request under the Mutual Legal Assistance Treaty ("MLAT"). He is now Acting Director. He goes into some detail as to his functions under MLAT as a delegate of the Attorney General, and those of officers of the Department of Justice, including Assistant United States Attorneys. It was in response to the MLAT request that the Cayman Central Authority under MLAT issued a certificate requiring the Solicitor General to apply to the Court for the relief prayed in the summons for the restraint order which it is now sought to discharge.

He describes the functions of two officers of the Department of Justice, Jason E. Carter, a trial attorney at the Office of International Affairs assigned to handle requests to the Cayman Islands and Maria L. De Marco, an Assistant U.S. Attorney in the Middle District of Florida responsible for the prosecution of this case in the United States under the supervision of the Attorney General. He goes on to say that Carter and De Marco are authorised, by virtue of their appointment by the Attorney

General to carry out litigative responsibilities on behalf of the United States and these responsibilities include the signing of affidavits in connection with ongoing cases.

The complaint put forward on behalf of the applicants is that the affidavit of Jason E. Carter is not an affidavit by the appropriate authority. It was not, in the final event, argued that Mr. Carter himself could not act as the alter ego of the Director of the Office of International Affairs on the basis of the principles embodied in Carltona Ltd v. Commissioner of Works (1943) 2 All ER 560 but that the affidavit does not and cannot assert the truth of its contents because it is, in that regard, no more than a vehicle for presenting the affidavit of Maria De Marco "based on the personal knowledge of the affiant." Moreover, Ms. De Marco herself, it was submitted, was merely mouthing words she had herself borrowed from an affidavit of Carl W. Coffman, a special agent of the Internal Revenue Service, the IRS. That affidavit is a "Master Affidavit" of Mr. Coffman, substantial parts of which are indeed incorporated into that of Ms. De Marco. Failure to disclose that the source is the IRS is it is said, material non-disclosure. The point was addressed by Mr. Coffman himself in an affidavit dated 11th December 1997. He says this -

> "I am a Special Agent of the Internal Revenue Service, assigned to the Criminal Investigation Division. I am trained to investigate financial crimes, including money laundering and tax evasion. In many instances, I am assigned to a case to solely investigate money laundering violations committed by individuals, organizations and corporations.
>
> The affidavit of Jason Carter sets forth violations of criminal laws engaged in by William and Chantal McCorkle and their related corporate entities. On May 9, 1997, law enforcement officers and agents employed with various state and federal law enforcement agencies executed federal search warrants

> at the McCorkles' residence and business locations, seizing a large volume of evidence."

In the light of that and other material before me which indicates the nature of the investigation I am satisfied that the submission that failing to inform the Grand Court that Miss De Marco is merely mouthing the words of a tax investigator is serious and culpable non-disclosure is untenable. Nor was the Cayman Central Authority misled in the issuing of his certificate. The evidence of Mr. Snow satisfies me that the necessary affidavit was made by the appropriate authority and that this is not a tax case.

GROUND 5 - The affidavit of Ms. De Marco fails to deal with all the requirements of paragraph 8 of the Schedule of the PCCL.

The requirements which are relevant are those of subparagraphs 8 (b) (d) (e) (f) (g) & (h).

The issue with regard to (b) and (d) (iv) is whether proceedings were instituted within 7 days. That is dealt with in Grounds 3 and 4.

Subparagraph (d) prescribes the matters which are to be deposed to in the affidavit by the appropriate authority which shall accompany the application for a restraint order where an external confiscation order has not been made. The first is the grounds for the belief that the defendant derived a benefit of a stated amount as a result of the conduct. What Ms. De Marco says is that the amount is "an amount exceeding 7

million dollars" and she goes on to state the grounds for that belief. Now paragraph 6 (3) of the Schedule allows a restraint order, where an application does not relate to an external confiscation order made in respect of specified property. to apply to all realizable property held by a specified person, whether the property is described in the restraint order or not. The Court does not have to state a precise amount in the order. Nor in my judgment does the statement of an amount have to do more than was done by Ms. De Marco. In many cases, and certainly in this case, it will be impossible to quantify the amount precisely in dollars and cents and an attempt to so do is likely to be met with the response that the arithmetic is wrong. The PCCL will be unworkable.

I find that subparagraphs (d) - (g) have been sufficiently complied with in the affidavits of Jason Carter and Maria De Marco, read as a whole. With regard to paragraph (h) the evidence is that the large body of people who are alleged to be victims of the conduct of Mr. & Mrs. McCorkle will not have an interest in the property which is subject to the restraint order as a result of the making of an external confiscation order. Inclusion of all their names and addresses was not a requirement. Their position is set out in paragraph 9 of an affidavit dated 11th December 1997 to which I refer later in this judgment.

GROUND 7 - Abuse of Process and GROUND 8 - Discharge of the Order under a discretion conferred upon the Court in paragraph 6 (6) (a).

I will deal with Ground 8 first as I can do so quite briefly. Paragraph 6 (6)(a) simply provides that a restraint order may be discharged or varied in relation to any property. It is simply a provision to indicate the form in which an order can be made rather than

one extending the powers elsewhere provided to make an order at all. I did consider in relation to Ground 1 whether I should vary the restraint order so as to exclude events occurring before 23rd December 1996 but concluded that section 2 (4) would prevent that. In any event the conclusion which I arrived at on Ground 2 required the discharge of the order.

With regard to Abuse of Process it was contended that the following matters should be taken into account as well as those put forward in relation to Grounds 1 to 6. Firstly, no proceedings for an offence of the kind required by the Proceeds of Criminal Conduct (Designated Countries) Order 1997 have been instituted, although the affidavit of Lisa Young dated 15th July 1997 asserted that criminal proceedings were pending in the United States and a grand jury had convened and would determine if there was sufficient evidence to return a criminal indictment; the filing of an application for an external confiscation order was a device to allow the property in the Cayman Islands to be restrained while the leisurely process of an enquiry before a grand jury took its course.

An affidavit by Edward B. Gaines an Assistant U.S. Attorney in the Middle District of Florida was sworn and filed in the Cayman Islands on the 11th December 1997. It sets out in some detail the federal laws applicable to instituting federal criminal charges including the time restraints imposed by law in bringing to trial a person charged with a federal crime. It is interesting enough for me to quote the substantive paragraphs of the affidavit in full -

> "2. Pursuant to Federal Rule of Criminal Procedure (Fed. R. Crim. Pro.) Rule 5(a), the law provides that

a person arrested without an arrest warrant "shall be taken without unnecessary delay before the nearest available federal magistrate judge or, if a federal magistrate judge is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. & 3041." Moreover, pursuant to Fed. R. Crim. Pro. Rule 5(a), if an individual is arrested without an arrest warrant having been previously issued, the government must promptly file a criminal complaint, satisfying the requirement of Fed. R. Crim. Pro. Rule 4(a).

3. Fed. R. Crim. Pro. Rule 4(a) provides that an arrest warrant will issue "[i]f it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it ..."

4. Pursuant to Fed. R. Crim. Pro. Rule 5(c), once the criminal complaint is filed, the defendant is entitled to a preliminary examination "not later than ten days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody ...." However, a preliminary examination need not be held if the defendant is indicted before the date set for the preliminary examination. Id.

5. Pursuant to fed. R. Crim. Pro. Rule 5.19a), if a preliminary examination is conducted, the "federal magistrate judge shall forthwith hold the defendant to answer in district court" if the magistrate judge finds that there is "probable cause to believe that an offense has been committed and that the defendant committed it ...."

6. Pursuant to the Speedy Trial Act, embodied in Title United States Code, Section 3161, et seq., certain time limitations exist between the date of an arrest and the return of an indictment by a federal grand jury. In accordance with 18 U.S.C. & 3161(c)(1), trial must commence against an indicted defendant "within seventy days from the filing date (and making public) of the ... indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." However, according to 18 U.S.C. & 3161 (c)(2), the trial "shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se."

7. In summary, once an individual is arrested, the government must obtain a grand jury indictment within 30 days from that date. The trial shall commence not later than 70 days following the date the defendant has his first appearance before a judge on the indictment. A federal grand jury is an investigative body, and the grand jury's investigative power may not be used to further investigate crimes charged in an indictment after the indictment is returned. Accordingly, should the government arrest an individual, the government may not use the grand jury's subpoena power to conduct the investigation for more than 30 days following the arrest. Therefore, an investigation must be completed prior to the institution of criminal charges via a criminal complaint or an arrest or be barred from continuing the investigation through the grand jury 30 days thereafter.

8. The verified complaint for forfeiture ("EBG 1" to your affiant's first affidavit of December 10, 1997) pertaining to the funds restrained in the Cayman Islands was filed on May 28, 1997 and was initially filed under seal. However, on June 9, 1997, Magistrate Judge David Baker denied the government's motion to seal the verified complaint and the supporting "master affidavit." On June 20, 1997, the Court granted the government's amended motion to seal, ordering that the "master affidavit" only remain under seal. Accordingly, the verified complaint for forfeiture is and has been a matter of public record since June 1997.

9. Forfeiture under 18 U.S.C. & 981 and/or & 982 for money laundering violations of 18 U.S.C. && 1956, 1957 is distinct and separate from restitution which may be separately ordered by the sentencing judge following a conviction. In my experience, funds seized pursuant to forfeiture laws are not used to provide restitution to victims of the crime, except in cases where a petition for remission is filed by a victim and granted by responsible Department of Justice officials in Washington, D.C."

Now on behalf of Mr. & Mrs. McCorkle it is argued that what this affidavit is doing is to say that if the United States brings criminal proceedings against them the law will protect them in various ways and it is for that reason that they do not want to bring

proceedings against them just yet. The snails pace investigation by the Grand Jury at the rate of two days of work a month is no doubt influenced by the fact that they do not want to charge him yet because the protection of the law would bite. That, it is said, is a classic and disgraceful abuse of process. It is trite that the process of a court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery and will in a proper case summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim an abuse of process are not closed and for this purpose considerations of public policy and the interests of justice are material. Nevertheless, specific examples abound and are set out in Note 18/19/15 of the English Supreme Court Practice 1997 edition.

I do not go so far as to find that there was an abuse of process. I do however consider that the observations which were made on behalf of Mr. & Mrs. McCorkle support the strict view which I have taken of certain provisions of the PCCL as a result of which I have concluded, for the reasons which I have given in relation to Grounds 1 and 2 of the application, that the restraint order should be discharged.

Leave to appeal granted and execution of this order stayed pending determination of the appeal.

20th January 1998

G.E. Harre
Chief Justice