

C.S. Chambers

B. 3. 95

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 92/95

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF
CERTIORARI AND PROHIBITION IN REGINA V. BARRY VICTOR RANDALL
CHARGE NO. 5840-5848/91

BETWEEN: BARRY VICTOR RANDALL APPLICANT
AND: THE MAGISTRATE SITTING AT
 GEORGE TOWN, GRAND CAYMAN RESPONDENT

Applicant in person

HARRE CJ.

JUDGMENT

The history of this matter is long. Mr. Randall faces criminal charges in relation to an enterprise called Cayman Capital Trust Company and is a respondent in civil proceedings relating to the same company. Injunctions were obtained in the civil proceedings over his assets, subject to relief from their full rigour in respect of his income. The relevant part of the injunctions, in the action which still subsists No. 230/89, as varied by an order dated 23rd September 1994 is this-

"IT IS HEREBY ORDERED THAT -

Barry Victor Randall be:

(1) (1) entitled to draw his normal living expenses not exceeding CI\$500 per week from future earnings, provided that a special account be opened and that all future earnings be paid into the account. Copies of bank statements and lodgments to be provided to the Liquidator.

(2)
(a)
(b)
(c)
(d)

legal expenses and disbursements in relation to Cause 230/89 and/or any criminal proceedings against Barry V. Randall within the jurisdiction of the Cayman Islands."

Clearly that relaxation of the injunctive restrictions relates only to the funds within the special account for future earnings. Other assets remain frozen.

There has been correspondence over some months between Mr. Randall, his attorney, Crown Counsel and the Magistrate about his legal aid. All I propose to say about it in relation to this application for leave to apply for certiorari and prohibition is this. The learned Magistrate signed, on 27th February 1995, exactly one month before the date set for the preliminary enquiry into the criminal matters, a legal aid certificate in the standard form P.P. 3. Beneath his signature was the following note -

"Subsidised legal aid granted for two counsel subject to an undertaking by the defendant to disclose by affidavit and reimburse such sums if any as are found by the court to have become available to him following the order of the Grand Court in Cause No. 230/89 dated 23rd September 1994".

I interpret the meaning and effect of this certificate in the

following way. Mr. Randall has been granted full legal aid for one counsel. He is not in danger of being unrepresented at the preliminary enquiry for lack of legal aid. If he instructs two counsel the undertaking in the footnote to the legal aid certificate is implicit. If, as he says, the issue of the certificate has been held up for lack of his signature on such an undertaking, that is misconceived. The certificate should issue forthwith.

With regard to Mr. Randall's second complaint - that counsel will not now in any event have sufficient time to prepare for the preliminary enquiry - that is a matter for an application at or before the beginning of that enquiry. It is a matter for decision by the learned Magistrate and it would be quite inappropriate for this court to give leave for an application for judicial review which would, whatever its outcome, have the effect of removing that jurisdiction of the Magistrate in relation to the hearing set for 27th March.

That is already an adjourned hearing and the matters are on their face complicated and with an international aspect. All these are factors as well as the position of Mr. Randall himself, which are eminently suited for the Magistrate, before whom the whole matter is, to determine on any application for a further adjournment.

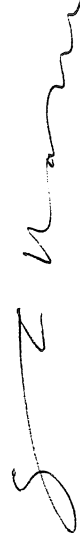
Mr. Randall alleges that the Magistrate misdirected himself as to the legal and practical effect of the order dated 23rd September 1994 made in Cause No. 230/89. Because it affects the scope of the undertaking by him in relation to the instructing of two counsel I add to what I

have already said - that the relaxation of its terms relates only to what is in the special income account - my view that the undertaking is clearly not intended to, and does not, carry the meaning that Mr. Randall must turn over everything in that account to reimburse the legal aid fund, even at the expense of the basic needs of his family and himself. That is absurd.

Mr. Randall is free to use the proceeds of that account for any of the purposes set out in the order as varied. Consequently the undertaking given is of modest effect, if any, unless Mr. Randall achieves a very significant increase in his present income.

I conclude that Mr. Randall is in no peril, unless he chooses to be, of being unrepresented at the preliminary enquiry, and any argument as to the appropriateness of a further adjournment can be fully canvassed before the learned Magistrate. Moreover, I see no reason why the phrase "subsidised legal aid" advanced should not, as a matter of plain English, include legal aid which is subject to a contingent liability to repay, as well as legal aid which is subject to an upper limit.

For all these reasons, the writ of certiorari and prohibition do not need to be invoked in this case and leave to proceed on that basis is refused.



G.E. Harre
Chief Justice

13th March 1995